

THIS MASTER SERVICES AGREEMENT made effective as of December 18, 2017 (the **"Effective Date"**)

BETWEEN:

LIQUOR CONTROL BOARD OF ONTARIO
(the **"LCBO"**)

- and -

SHOPIFY INC. (the **"Supplier"**)

WHEREAS the LCBO issued a Request for Proposals #2017 – 081 for a cloud based Retail-as-a-Service solution;

AND WHEREAS the Supplier submitted a response dated as of November 20, 2017;

THEREFORE in consideration of their respective agreements set out below, the parties covenant and agree as follows:

ARTICLE 1 INTERPRETATION AND GENERAL PROVISIONS

1.1 Defined Terms

When used in the Agreement, the following words or expressions have the following meanings:

"Acceptance Criteria" means the characteristics, standards, benchmarks or specifications of a Deliverable against which the quality of the Deliverable will be assessed, which are set out in a Statement of Work.

"Acceptance Test" means the tests performed by the Supplier to ensure the Deliverable meets the Acceptance Criteria, which are set out in a Statement of Work. **"Acceptance Testing"** shall have a corresponding meaning.

"Acceptance Test Commencement Date" shall have the meaning set out in Article 4.7(a).

"Acceptance Test Plan" shall have the meaning set out in Article 4.7(a).

"Aggregated Statistical Information" shall have the meaning set out in Article 9.6.

"Agreement" means the aggregate of this agreement, all schedules attached to this agreement, all materials incorporated in the Agreement by reference and any amendments executed in accordance with the terms of the Agreement.

"Background IP" shall have the meaning set out in Article 10.2(a).

"Benchmarker" shall have the meaning set out in Article 7.10.

"Benchmarked Offering" shall have the meaning set out in Article 7.10(b).

"Business Day" means any working day, Monday to Friday inclusive, excluding statutory and other Ontario provincial government holidays, namely: New Year's Day; Family Day, Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day and any day which the LCBO has elected to be closed for business.

"Ceiling Price" means, as set forth in an applicable Statement of Work, the maximum total amount, in Canadian funds, as set out in the Statement of Work, which the Supplier may charge the LCBO, or the LCBO must pay the Supplier, including:

- (a) all Fixed Price amounts;
- (b) all amounts for Services performed on an Hourly Rate basis
- (c) all Transaction Fees;

but excluding all applicable taxes.

"Change Order" means, in respect of the Agreement or a Statement of Work, a written amendment executed by the parties that specifies the changes agreed.

"Claims" shall have the meaning set out in Article 11.1(a).

"Comparable Service Offering" shall have the meaning set out in Article 7.10(b).

"Confidential Information" means LCBO Confidential Information and Supplier Confidential Information. Confidential Information does not include information that: i) is or becomes generally available to the public without fault or breach on the part of the receiving party of any duty of confidentiality owed by the receiving party to the disclosing party or to any third-party; ii) the receiving party can demonstrate to have been rightfully obtained by the receiving party, without any obligation of confidence, from a third-party who had the right to transfer or disclose it to the receiving party free of any obligation of confidence; iii) the receiving party can demonstrate to have been rightfully known to or in the possession of the receiving party at the time of disclosure, free of any obligation of confidence when disclosed; or iv) is independently developed by the receiving party.

"Conflict of Interest" includes, but is not limited to, any situation or circumstance where: i) in relation to the RFP process, the proponent has an unfair advantage or engages in conduct, directly or indirectly, that may give it an unfair advantage, including (A) having, or having access to, information in the preparation of its proposal that is confidential to the LCBO and not available to other proponents; (B) communicating with any person with a view to influencing preferred treatment in the RFP process; or (C) engaging in conduct that compromises, or could be seen to compromise, the integrity of the open and competitive RFP process and render that process non-competitive and unfair; or ii) in relation to the performance of its contractual obligations in a contract with the LCBO, the Supplier's other commitments, relationships or financial interests (A) could, or could be seen to, exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgement; or (B) could, or could be seen to, compromise, impair or be incompatible with the effective performance of its contractual obligations.

"Credit" means a deduction from an amount owed to the Supplier by the LCBO pursuant to a Statement of Work, which deduction arises from a failure to meet a Service Level as detailed further in a Statement of Work, if applicable.

"Deliverables" means everything developed for and provided to the LCBO in the course of performing the Services, as agreed to be provided to the LCBO in connection therewith, by the Supplier or its employees, volunteers, agents or Subcontractors, including but not limited to any goods or services and any information, reports, documentation and other materials, however recorded, developed or provided.

"Designated Executives" means those executives listed as Designated Executives.

"Dispute" shall have the meaning set out in Article 15.1.

"Disputed Charge" shall have the meaning set out in Article 7.4.

"Draft Benchmarking Report" shall have the meaning set out in Article 7.10(c).

"DSS" shall have the meaning set out in Article 13.3(a).

"Effective Date" shall have the meaning set out in the recitals to this Agreement.

"Expiry Date" means the day prior to the third anniversary of the Effective Date, unless extended or terminated in accordance with the provisions of this Agreement.

"FIPPA" shall have the meaning set out in Article 9.1.

"Final Benchmarking Report" shall have the meaning set out in Article 7.10(c).

"Fixed Price" means, in respect of particular Services performed and/or particular Deliverables provided and subject to Article 7, the amount that the Supplier may charge for particular Services performed and/or particular Deliverables provided or the manner in which such amount will be determined, as set out in a Statement of Work, which shall be fixed and not subject to change unless otherwise agreed to in a Change Order. For certainty, the "Fixed Price", as it relates to the particular Services performed and/or Deliverables provided, includes all labour and material costs, all travel and accommodation costs, insurance costs, carriage and transportation costs, and other overhead, including any fees or other charges required by law, but excludes i) applicable taxes; and ii) amounts that are charged on an Hourly Rate basis.

"Fee" or "Fees" means, that amount set forth in an applicable Statement of Work that the Supplier may charge LCBO for the Services as a whole, and for the avoidance of all doubt shall include all applicable Fixed Price, and Hourly Rate amounts.

"Go-Live Date" means the effective date upon which LCBO is legally entitled to retail cannabis for recreational use in Ontario.

"Governance Committees" means the consultative and advisory bodies through which the parties agree to monitor, review and discuss all aspects of this Agreement as set out in Article 15.

"Indemnified Parties" means the LCBO and its members, officers, representatives, agents and employees.

"Initial Acceptance Period" has the meaning set out in 4.7(a).

"Initial Term" shall have the meaning set out in Article 3.1.

"Intellectual Property Rights" means any and all rights, in any jurisdiction, provided under: (a) patent law; (b) copyright law (including moral rights); (c) trade-mark law (including laws governing trade-marks, trade names and logos); (d) design patent or industrial design law; (e) semi-conductor chip or mask work law; or (f) any other statutory provision (including laws governing domain names), common law principle (including trade secret law and law relating to information of the same or similar nature and protected in the same or similar way) or equitable principle governing Intellectual Property, whether registered or unregistered, and including rights in any and all applications and registrations in respect of the foregoing.

"Key Personnel" shall have the meaning set out in Article 6.3.

"LCBO" shall have the meaning set out in the recitals to this Agreement.

"LCBO Address" and **"LCBO Representative,"** mean:

LCBO
55 Lake Shore Blvd East, 3rd Floor,
Toronto, Ontario M5E 1A4
Attention: **Julia Zhu**
Email: julia.zhu@lcbo.com

"LCBO Confidential Information" means all information of the LCBO disclosed to or otherwise acquired by the Supplier in connection with this Agreement that is of a confidential nature, including all confidential information in the custody or control of the LCBO (including any third party information), regardless of whether it is identified as confidential or not, and whether recorded or not, and however fixed, stored, expressed or embodied, that comes into the knowledge, possession or control of the Supplier in connection with the Agreement. LCBO Confidential Information includes: i) LCBO Data (other than Aggregated Statistical Information); and (ii) Personal Information.

"LCBO Data" means all data and information submitted or made available directly to Supplier by or on behalf of LCBO in any connection with the Agreement and the Services, including Personal Information pertaining to i) LCBO employees and ii) third party purchasers and/or consumers of LCBO's products via the Services, and for the avoidance of all doubt, including any reports to be delivered by Supplier specific to the performance of the Services.

"LCBO Indemnified Parties" means the LCBO and its officers, employees, agents, representatives, successors and assigns;

"LCBO Intellectual Property" means LCBO Background IP and Newly Created Materials.

"Losses" means all party-party and 3rd party, losses, liabilities, damages, fees, fines, penalties, and all related costs and expenses (including reasonable legal fees and disbursements and reasonable costs of investigation, litigation, settlement, judgment, and interest and penalties thereon).

"Newly Created Materials" shall have the meaning set out in Article 10.3(a).

"Ontario" means Her Majesty the Queen in right of Ontario.

"P2PE" shall have the meaning set out in Article 13.3(b).

"PCI" shall have the meaning set out in Article 13.3(a).

"PCI DSS" shall have the meaning set out in Article 13.3(a).

"**Personal Information**" has the same definition as in subsection 2(1) of the *Freedom of Information and Protection of Privacy Act*, that is, recorded information about an identifiable individual or that may identify an individual which has been obtained by the Supplier from the LCBO or obtained by the Supplier on behalf of the LCBO pursuant to the Supplier's performance of the Services.

"**Personnel**" means collectively, in the case of the Supplier, individuals who provide services to the Supplier or any of its Subcontractors in connection with the Agreement, whether as employees or independent contractors, and individuals who are assigned by the Supplier to perform Services for the LCBO pursuant to the Agreement and includes Key Personnel.

"**Permitted Substitution**" shall have the meaning set out in Article 6.3.

"**Pre-Deployment Termination Fee**" shall have the meaning set out in Article 14.4(a).

"**Post-Deployment Termination Fee**" shall have the meaning set out in Article 14.4(b).

"**Problem**" means an error, problem, defect or failure in a Deliverable that causes the Deliverable to malfunction or to produce incorrect results, or that prevents the Deliverable from performing, in all material respects, in accordance with its specifications, or that makes it difficult or impossible for the LCBO to access or use the Deliverable.

"**Proceeding**" means an action, claim, demand, lawsuit, or other proceeding.

"**Proposal**" means the proposal submitted by the Supplier in response to the RFP, and includes any clarifications provided by the Supplier at the request of the LCBO.

"**Record**" means any recorded information, except for Supplier Confidential Information or Supplier's Background IP, including any Personal Information, LCBO Confidential Information and LCBO Data (other than Aggregated Statistical Information), in any form: i) provided by the LCBO to the Supplier, or provided by the Supplier to the LCBO for the purposes of the Statement of Work; or ii) created by the Supplier for LCBO in the performance of a Statement of Work.

"**Renewal Period**" shall have the meaning set out in Article 3.1.

"**Requirements of Law**" mean all applicable requirements, laws, statutes, codes, acts, ordinances, orders, decrees, injunctions, by-laws, rules, regulations, official plans, permits, licences, authorisations, directions, and agreements with all authorities that have the force of law that now or at any time hereafter may be applicable to the Agreement, the Services or the Deliverables or any part of them.

"**RFP**" means the Request for Proposals #2017-081 issued by the LCBO and any addenda to it.

"**Services**" means all services and work to be provided or performed by the Supplier pursuant to a Statement of Work, and includes everything that is necessary to be done, supplied or delivered by the Supplier and by those for whom the Supplier is responsible and includes, but is not limited to, any consulting, planning, design, training, development and configuration services as more fully set forth in a Statement of Work, as well as any additional services agreed to between the parties in writing.

"Security Breach" shall have the meaning set out in Article 9.7(1)(o).

"SOW End Date" means, in respect of a Statement of Work, the SOW End Date set out in the Statement of Work, subject to termination under Article 14.

"SOW Start Date" means in respect of a Statement of Work, the SOW Start Date set out in the Statement of Work.

"SOW Term" means, in respect of a Statement of Work, the term of such Statement of Work commencing on the SOW Start Date and continuing until the SOW End Date, unless otherwise terminated in accordance with this Agreement or the Statement of Work.

"Statement of Work" means a set of terms outlining the performance of the Services constituted by a document substantially in the form of "Schedule A-1" or Schedule "A-2" (as applicable) that is entered into by the LCBO and the Supplier pursuant to this Agreement, which incorporates by reference the terms of this Agreement, and which identifies the LCBO, the Supplier, the Services and the other information set out in that Schedule. Each Statement of Work constitutes a separate contract. A "Statement of Work" includes all Change Orders made to it.

"Steady State Services" shall have the meaning set out in Article 3.1(a).

"Subcontractor" means, in the case of each party, any contractor or subcontractor at any tier of that party.

"Suggestions" shall have the meaning set out in Article 10.6.

"Supplier" shall have the meaning set out in the recitals to this Agreement.

"Supplier Address" and **"Supplier Representative"** mean:

Shopify Inc.
Attention: General Counsel
Email: S14(1)(i)(i)

"Supplier Confidential Information" means all information of Supplier, its affiliates, subsidiaries and their respective Subcontractors disclosed to or otherwise acquired by the LCBO in connection with this Agreement that is of a confidential nature, including all confidential information in the custody or control of such persons (including any third party information), regardless of whether it is identified as confidential or not, and whether recorded or not, and however fixed, stored, expressed or embodied, that comes into the knowledge, possession or control of the LCBO in connection with the Agreement.

"Term" means the term of the Agreement, as more particularly provided in Article 3, including all extensions thereof.

"Termination Assistance Period" means a period of up to twelve (12) months, from the date of expiry, completion or effective date of termination of this Agreement, as applicable, with such Termination Assistance Period to be exercised at the sole discretion of LCBO.

"Termination Assistance Services" shall have the meaning set out in Article 14.8.

"Transition Fee" shall have the meaning set out in Article 3.1.

"Warranty Period" shall have the meaning set out in Article 4.4.

"WSIA" shall have the meaning set out in Article 12.3.

1.2 Entire Agreement

The Agreement, together with all Statements of Work entered into thereunder, embodies the entire agreement between the parties with regard to the provision of the Services and the Deliverables and supersedes any prior understanding or agreement, collateral, oral or otherwise, existing between the parties at the date of execution of the Agreement. Subject to the terms and conditions of this Agreement, each Statement of Work embodies the entire agreement between the parties with regard to the provision of the Services and the Deliverables subject to the Statement of Work and supersedes any prior understanding or agreement, collateral, written or otherwise, related to the subject matter of the Statement of Work that exists between the parties at the date of execution of the Statement of Work.

1.3 Amendments

Any changes to the Agreement or a Statement of Work shall only be made by written Change Order signed by the LCBO and the Supplier. No changes shall be effective or carried out in the absence of such an amendment.

1.4 Severability

If any term or condition of the Agreement, or the application thereof to the parties or to any parties or circumstances, is to any extent invalid or unenforceable, the remainder of the Agreement, and the application of such term or condition to the parties, entities or circumstances other than those to which it is held invalid or unenforceable, is not affected thereby.

1.5 Interpretive Value of Contract Documents

The RFP and the Proposal form a part of the Agreement. In the event of a conflict or inconsistency in any provisions in the Agreement i) the main body of this Agreement governs over the schedules to this Agreement; ii) this Agreement (including its schedules) governs over the RFP and the Proposal; and iii) the RFP governs over the Proposal. The Agreement governs over any individual Statement of Work except to the extent that the Statement of Work expressly specifies otherwise. If the Parties intend a Statement of Work to change or override the provisions of the Agreement, the Statement of Work must clearly indicate the parties' intention to establish a different priority, including a clear acknowledgement specifically referring to the provisions of the Agreement that are changed or overridden.

1.6 Interpretive Value of Headings

The headings in the Agreement are for convenience of reference only and in no manner modify, interpret or construe the Agreement.

1.7 Force Majeure

Neither party shall be liable for damages caused by delay or failure to perform its obligations under the Agreement or a Statement of Work where such delay or failure is caused by an event beyond its reasonable control. An event is not considered beyond one's reasonable control if a reasonable business person applying due diligence in the same or similar circumstances under the same or similar obligations as those contained in the Agreement or the applicable Statement of Work would have put in place contingency plans to either materially mitigate or negate the effects of such event. An event shall be considered beyond Supplier's reasonable control to the extent it has complied with its business continuity obligations set out in Article 9.8. Without limiting the generality of the foregoing, force majeure events include natural disasters and acts of war, insurrection and terrorism but do not include shortages or delays relating to supplies or services. If a party seeks to excuse itself from its obligations under the Agreement due to a force majeure event, that party shall promptly notify the other party of the delay or non-performance, the reason for such delay or non-performance and the anticipated period of delay or non-performance. If the anticipated or actual delay or non-performance exceeds fifteen (15) Business Days, the other party may immediately terminate the Agreement by giving notice of termination and such termination is in addition to the other rights and remedies of the terminating party under the Agreement, at law or in equity provided that in the event the LCBO terminates pursuant to this Article 1.7 prior to the Go-Live Date, the LCBO shall pay the Supplier the Pre-Go-Live Termination Fee in accordance with Article 14.4(a).

1.8 Notices by Prescribed Means

Notices must be in writing and must be delivered by postage-prepaid envelope, personal delivery or email and must be addressed to, respectively, the LCBO Address to the attention of the LCBO Representative and to the applicable Supplier Address to the attention of the Supplier Representative. Notices are deemed to have been given i) in the case of notices given by postage-prepaid envelope, five (5) Business Days after such notice is mailed; or ii) in the case of notices given by personal delivery or email, one (1) Business Day after such notice is received by the other party. In the event of a postal disruption, notices must be given by personal delivery or email. Unless the parties expressly agree in writing to additional methods of notice, notices may only be provided by the methods contemplated in this paragraph. A party may change its address, email or designated representative for receipt of notices by providing notice to the other party.

1.9 Governing Law

The Agreement is governed by, and shall be construed in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein. All legal proceedings related to the subject matter of the Agreement shall be submitted to the exclusive jurisdiction of the courts of the Province of Ontario.

1.10 Condonation Not a Waiver

Any failure by a party to insist in one or more instances upon strict performance by the other party of any of the terms or conditions of the Agreement or a Statement of Work shall not be construed as a waiver by such party of its right to require strict performance of any such terms or conditions, and the obligations of the other party with respect to such performance continue in full force and effect.

1.11 Rights and Remedies Not Limited to Agreement

The express rights and remedies of each party and the respective obligations thereof set out in the Agreement or a Statement of Work are in addition to and do not limit any other rights and remedies available to, or any other obligations of, either party at law or in equity.

1.12 Survival

Except where the context clearly provides to the contrary, provisions, covenants, representations and warranties that are intended by their terms or by logical inference to survive the termination of the Agreement shall so survive the expiration, termination or completion of the Agreement.

1.13 Currency

Unless otherwise indicated, all dollar amounts referred to in the Agreement are in Canadian funds.

1.14 Further Assurances

The parties shall from time to time, after the execution of the Agreement, promptly make, do or execute or cause or permit to be made, done or executed all such further acts, deeds, things, conveyances and assurances as may be required to carry out the intention and to give full effect to the Agreement and each Statement of Work.

1.15 No Indemnities from LCBO

Despite anything else in this Agreement or any Statement of Work, any express or implied reference to the LCBO providing an indemnity or any other form of indebtedness or contingent liability that would directly or indirectly increase the indebtedness or contingent liabilities of the LCBO, whether at the time of execution of this Agreement or any Statement of Work or at any time during the Term of this Agreement or the SOW Term of any Statement of Work, shall be void and of no legal effect.

1.16 Promotion Restrictions

Any publicity or publications related to this Agreement or a Statement of Work shall be at the sole discretion of the LCBO. The LCBO may, in its sole discretion, acknowledge any Services provided by the Supplier in any such publicity or publication. The Supplier shall not make use of its association with the LCBO in relation to this Agreement or any Statement of Work without the prior written consent of the LCBO. Without limiting the generality of this Article, the Supplier shall not, among other things, at any time directly or indirectly communicate with the media in relation to this Agreement or any Statement of Work unless it has first obtained the express written authorization to do so by the LCBO. For further clarity, the Supplier shall not i) make reference to the specific provision of the Services and Deliverables to the LCBO in any marketing materials, proposals or to other clients of the Supplier; and ii) may not use the provision of the Services or Deliverables as a case study (anonymized or otherwise) for use with any third-parties for marketing or any other purposes.

1.17 Schedules

The following schedules form part of this Agreement:

Schedule A	-	FORM OF STATEMENT OF WORK
Schedule B	-	INFORMATION SECURITY REQUIREMENTS
Schedule C	-	FORM OF WRITTEN STATUS REPORT
Schedule D	-	BUSINESS CONTINUITY

ARTICLE 2 SCOPE OF SERVICES

2.1 Scope of Services

The Supplier shall provide the Services and, if required, any additional services as detailed in Statements of Work, to the LCBO. The Supplier shall provide all Services so that the requirements of this Agreement and any Statements of Work are met. The Supplier agrees to provide to the LCBO, and the LCBO agrees to acquire from the Supplier, all of the Services that fall within the scope of this Agreement and each Statement of Work executed under this Agreement by the Supplier and the LCBO.

Any additional services shall be performed only pursuant to a Statement of Work. The Supplier agrees to provide the LCBO all of such additional services that fall within the scope of each Statement of Work executed under the Agreement. Each Statement of Work incorporates the terms and conditions of the Agreement by reference. No term or condition set out in any Statement of Work has any effect upon any other Statement of Work. Each Statement of Work is governed by all of the terms and conditions of the Agreement, and such additional terms and conditions as may be set out in the Statement of Work that are not inconsistent with the terms of the Agreement except to the extent expressly provided otherwise in accordance with Article 1.5.

2.2 Statements of Work

Each Statement of Work shall address, to the extent applicable, the following information with respect to specific Services:

- (a) LCBO's specific requirements, including the specific Services and Deliverables required;
- (b) Project schedule and milestones;
- (c) Acceptance Criteria for the Deliverables;
- (d) Payment schedule tied to Deliverables or milestones;
- (e) Personnel assigned to perform the Services and their respective Roles;
- (f) Details of pricing under the Statement of Work; and
- (g) Daily rate (if applicable) for each of the assigned Personnel.

For further clarity, to the extent a Ceiling Price is set out in a Statement of Work, if the Supplier does not reach such Ceiling Price, only the Services actually provided shall be invoiced, but in no event shall an amount greater than the Ceiling Price be invoiced pursuant to a Statement of Work unless agreed to in writing by the LCBO.

2.3 Cooperation

The LCBO shall cooperate with the Supplier in the performance of the Services hereunder, including, without limitation, providing the Supplier with reasonable and timely access to necessary LCBO facilities, personnel, systems and information. The LCBO shall be responsible for the performance of its employees and agents and for the accuracy and completeness of all data and information provided to Supplier hereunder. The Supplier shall be entitled to rely on all decisions and approvals of the LCBO. Where requested, except as otherwise provided in a Statement of Work, LCBO shall provide feedback to the Supplier within ten (10) Business Days of request by the Supplier, or such shorter time as may be set out in the applicable Statement of Work.

2.4 Work Volumes; Non-Exclusivity

The Supplier acknowledges that the LCBO makes no representation, warranty, guarantee or other agreement regarding the volume of Services to be acquired from the Supplier pursuant to the Agreement. Each party acknowledges that the other party is entering into the Agreement on a non-exclusive basis. The LCBO reserves the right to contract with other parties for the same or similar services as those provided by the Supplier and reserves the right to obtain them internally.

ARTICLE 3 TERM

3.1 Term of Agreement

Unless otherwise terminated early in accordance with the provisions of this Agreement, the term of this Agreement shall commence on the Effective Date and end on the Expiry Date (the “**Initial Term**”). In its sole and absolute discretion, the LCBO may extend the Term of the Agreement by two (2) additional periods of two (2) years each (each a “**Renewal Period**”) by providing sixty (60) days’ written notice of its intention to extend prior to the Expiry Date.

In the event that the LCBO does not elect to:

- (a) extend the Initial Term of the Agreement or any Statement of Work for Software-as-a-Service services as, or substantially similar to those, set out in Schedule A-1 Statement of Work (the “**Steady State Services**”) or otherwise terminates the Agreement or any Statement of Work in year two or year three of the term for Steady State Services without cause prior to the expiration of the Initial Period, and where Transition Assistance Service are required of Supplier by LCBO as a result of such termination, the LCBO shall pay the Supplier a transition fee of **S17, S 18(1) and Economic Interest**
- (b) extend the Agreement or any Statement of Work for Steady State Services after the first Renewal Period or otherwise terminates the Agreement or any Statement of Work during the first Renewal Period for Steady State Services without cause after the Initial Period, and where Transition Assistance Services are required of Supplier by LCBO as a result of such termination, but prior to the expiration of the first Renewal Period, the LCBO shall pay the Supplier a transition fee of **S17, S 18(1) Economic Interest**

(the “**Transition Fee**”) in each case, within ninety (90) days of the completion of Shopify of all applicable Transition Assistance Services.

3.2 Term of Statement of Work

The term with respect to a Statement of Work commences on the SOW Start Date specified in the Statement of Work, and continues until the SOW End Date specified in the Statement of Work, unless terminated earlier in accordance with the provisions set out in Article 14. Each Statement of Work entered into prior to the expiry of the Term or renewal Term (as applicable) of this Agreement continues in full force and effect until the Services and Deliverables to be provided thereunder are completed and delivered to the LCBO, notwithstanding the expiry of the term or renewal term of the Agreement, unless the Statement of Work is terminated earlier in accordance with the terms of the Agreement.

ARTICLE 4 Performance by Supplier

4.1 Performance

The Supplier shall diligently carry out and complete the Services in accordance with the Agreement and Requirements of Law. The Supplier shall:

- (a) provide any and all labour, supplies, equipment and other goods or services that are necessary and can reasonably be understood or inferred to be included within the scope of the Agreement (provided that such inferred services shall not materially increase the scope of Services as set out in a Statement of Work) or customarily furnished by entities providing services of the type provided under the Agreement in similar situations in the Province of Ontario; and
- (b) adhere to commonly accepted norms of ethical business practices;
- (c) cause its assigned Personnel to adhere to the same standards of business conduct and workplace safety practices as applicable to LCBO employees generally as communicated to the Supplier in writing prior to execution of the Agreement.

4.2 Use and Access Restrictions

The Supplier acknowledges that unless it obtains specific written pre-authorization from the LCBO, any access to or use of LCBO property and technology (excluding LCBO Confidential Information) that is not necessary for the performance of its contractual obligations with the LCBO under the Agreement is strictly prohibited.

4.3 Performance Warranty

The Supplier hereby represents and warrants that the Services shall be provided fully and diligently in a professional and competent manner by persons qualified and skilled in their occupations. All Services and Deliverables provided under the Agreement or a Statement of Work are subject to acceptance testing by the LCBO. If any of the Services or Deliverables provided are not in accordance with the requirements of the Agreement or an applicable Statement of Work, the LCBO may reject it or may issue a rectification notice to the Supplier setting out the manner and time-frame for rectification, and the Supplier shall forthwith make the necessary corrections at its own expense as specified by the LCBO in a rectification notice.

4.4 Deliverables Warranty

The Supplier warrants that the Deliverables shall perform as required by this Agreement or the applicable Statement of Work, for a period of ninety (90) days commencing on the date the LCBO accepts the Deliverables pursuant to the acceptance process described in Article 4.7 - Acceptance Testing (the "**Warranty Period**"). During the Warranty Period, the Supplier shall correct, as soon as possible, at no additional charge to the LCBO, any defects and errors in the Deliverables that cause the Deliverables not to function or perform as required by the Agreement that LCBO notifies the Supplier of in writing. If any such defect cannot be or is not corrected during the Warranty Period, the Warranty Period will continue for such defect until the Deliverables function and perform in accordance with the Agreement.

4.5 Excused Performance

The Supplier's failures or delays in its performance are excused to the extent they result from: i) LCBO's acts or omissions, or those of its employees, agents, users, affiliates or LCBO Subcontractors; ii) reliance upon instructions, authorizations, approvals or other information from the LCBO and its representative(s); or iii) acts or omissions of third parties (unless such third parties are Subcontractors of the Supplier or are otherwise directed by Supplier). The Supplier will nevertheless use commercially reasonable efforts to perform.

4.6 Change Request Process

- (a) The parties may request a change to the Services and Deliverables provided under the Agreement or a Statement of Work by submitting to the other party a written change request reasonably detailing the scope and priority of the desired changes. Such change request shall be delivered to the other party's project manager and shall be expressly identified as a "change request". The Supplier shall promptly evaluate each change requested by the LCBO and shall promptly provide the LCBO with a written impact assessment that addresses relevant factors, including the implications for deadlines, fees any other terms and conditions.
- (b) No change request shall be implemented or incorporated unless and until both parties have executed a written change order. Under no circumstances will the Supplier be entitled to payment for any Services provided pursuant to a change request that have not been described in a written change order. Each change order shall contain a description of any additional services to be performed, any changes in the Supplier Personnel, a statement of the impact of the changes on the Services, Deliverables, deadlines, the Ceiling Price (if applicable), costs or other requirements of the Statement of Work, if applicable and signatures of each party.

4.7 Acceptance Testing

- (a) Prior to the date specified in the applicable Statement of Work for the start of acceptance testing (the "**Acceptance Test Commencement Date**"), the Supplier shall develop, in close consultation with the LCBO, and deliver to the LCBO, an acceptance test plan (the "**Acceptance Test Plan**") for the LCBO's review and approval. The Acceptance Test Plan shall consist of a description of the functionality and performance tests to be conducted to enable the LCBO to determine whether the Deliverable performs: i) without Problem; and ii) in accordance with the Acceptance Criteria. Such Acceptance Tests shall be conducted by the LCBO. Upon request, the Supplier shall provide the LCBO reasonable assistance in conducting the Acceptance Tests.

Upon the Acceptance Test Commencement Date, the LCBO shall commence the Acceptance Tests using the pre-approved Acceptance Test Plan. Except as otherwise set out in a Statement of Work, the Acceptance Tests shall be conducted over a period of ten (10) days (the "**Initial Acceptance Period**"), measured from the date on which the Deliverable has been delivered to the LCBO and is ready for Acceptance Testing as contemplated in the applicable Statement of Work. If any Acceptance Test establishes that the particular Deliverable(s) do not conform to the requirements or do not satisfy the Acceptance Criteria or if there is a Problem with the performance of the Deliverable, the LCBO shall notify the Supplier through an email addressed to **S14(1)(I)(i)** @shopify.com. The email shall contain sufficient detail to provide the Supplier with a reasonable opportunity to identify the inadequacies complained of. In the event the LCBO has not notified the Supplier of the acceptance of the Deliverables within the Initial Acceptance Period, the Supplier shall not proceed with the Services until such time as such notification is provided.

Notwithstanding anything to the contrary, the Supplier shall not be responsible or otherwise liable for any delays to the extent resulting from the LCBO's failure to respond to the Supplier in accordance with this Article, or as otherwise required of LCBO under the applicable Statement of Work, including without limitation missed milestones. The Supplier shall correct or modify the Deliverable(s), in a commercially reasonable manner and at no charge, and deliver the corrected and/or modified Deliverable(s) to the LCBO within ten (10) Business Days or such other period as may be agreed to by the parties from time to time. A further Acceptance Test of an agreed upon duration shall be undertaken in order to determine whether the Deliverable(s), as so corrected and/or modified, satisfy the Acceptance Criteria. If the Supplier fails to provide corrected and/or modified Deliverable(s) or any of them that comply with the Acceptance Criteria within the time specified for completing an Acceptance Test then the LCBO may, at its option, extend the date for passing such Acceptance Test and require the Supplier to correct the Problems and thereafter repeat the Acceptance Test (in which case this Article 4.7(a) shall apply to the revised date). The Supplier shall continue to attempt to correct or modify the Deliverables until such time as the LCBO accepts the Deliverables pursuant to Article 4.7(b) below.

- (b) If the Deliverables fail to pass the Acceptance Test within the Initial Acceptance Period, as extended above, the LCBO may at its option:
- (i) extend the date for passing the Acceptance Test and require the Supplier to correct the Problems and thereafter repeat the Acceptance Test in accordance with Article 4.7(a) above; or
 - (ii) accept the Deliverables at their deficient level of performance, subject to an equitable price adjustment (if applicable) as mutually agreed to by the parties.

4.8 Payment not Acceptance

Formal acceptance of any component of the Deliverables shall be deferred until acknowledged in writing by the LCBO. The LCBO shall be deemed not to have accepted any component of the Deliverables unless and until all of the applicable Acceptance Tests are successfully completed. The payment of any amounts by the LCBO or the issuance of an installation certificate by the Supplier shall not be deemed to constitute acceptance by the LCBO of any component of the Deliverables.

The exercise or pursuit by the LCBO of any of its rights and remedies under Article 4.7(b) is without prejudice to its right to seek monetary damages or pursue any other right or remedy available under the Agreement or at law or in equity.

4.9 Service Levels

The Service Levels set out in a given Statement of Work shall apply to the delivery of all Services and the provision of all Deliverables as detailed in such Statement of Work.

ARTICLE 5 REPORTING AND GOVERNANCE

5.1 Reporting

During the Term of the Agreement, the Supplier shall report to the LCBO to keep the LCBO apprised of the progress of the Services and Deliverables under each applicable Statement of Work by providing a written status report on a weekly basis in addition to informal status updates to be provided on a regular basis. The Supplier shall also meet with the LCBO on a regular basis to discuss any performance concerns identified in such reports or as may otherwise arise during the provision of the Services and Deliverables. Written status reports to be delivered to the LCBO by Supplier shall take the form set forth in Schedule "C" to this Agreement.

5.2 Issue Resolution

Issues with the performance of the Services shall be managed in accordance with the dispute resolution process set out Article 15.

ARTICLE 6 Personnel

6.1 Personnel Qualifications

The Supplier shall provide appropriately qualified, skilled Personnel to perform the Services. The Supplier shall not permit any individual to perform any Services if the individual does not have appropriate experience.

6.2 Project Managers

Each of the LCBO and the Supplier shall each designate a responsible individual with adequate authority and competence as its project manager in each Statement of Work, as applicable. The Supplier's project manager is responsible for coordinating all aspects of the Supplier's performance of the Services in accordance with the Agreement.

6.3 Key Personnel

The Supplier acknowledges the importance of maintaining the availability of those of its Personnel who are critical to the success of the Services, either due to their area of specialization or their project management role (the "**Key Personnel**"). Key Personnel shall be expressly identified as "Key Personnel" in the applicable Statement of Work. The Supplier shall not substitute any of the Key Personnel, unless such substitution: i) is done with the prior written approval of the LCBO (which shall not be unreasonably withheld, conditioned or delayed); ii) is done in accordance with Article 6.4 below; iii) is required because the Key Personnel leaves the employment of the Supplier; or (iv) is required because the Key Personnel is required to take a leave of employment for personal reasons (each a "**Permitted Substitution**").

6.4 Substitution of Personnel required by LCBO

The LCBO may require substitution of an appropriate qualified person (having skill and experience that is equivalent or superior to that of the person replaced) of the Supplier's staff if, after the commencement of the Term of the Agreement, an individual is considered by the LCBO (acting reasonably) to be unacceptable. The Supplier shall submit to the LCBO the name and resume of a suitable replacement for each of the Personnel deemed unacceptable by the LCBO. The substitution shall be made by the Supplier within a reasonable time.

6.5 Substitution Procedure

Without limiting any rights that LCBO may have in connection with substitution of Key Personnel, if the Supplier does substitute Key Personnel (either as a Permitted Substitution or otherwise, including in accordance with Article 6.4), the Supplier shall provide a replacement for the Key Personnel and agrees that the following shall govern any such substitution:

- (a) When a substitution of Key Personnel is being made, to the extent commercially reasonable, the Supplier shall provide a minimum of fifteen (15) Business Days' written notice unless the substitution is pursuant to Article 6.4.

- (b) The individual specified as the replacement Key Personnel must possess similar or greater qualifications than the specified Key Personnel being replaced. The Supplier shall provide the LCBO, at the LCBO's request, with the opportunity to interview its proposed replacement Key Personnel, at no cost to the LCBO. The Supplier shall not charge the LCBO a higher rate than the rate applicable to the individual being replaced, even if the replacement Key Personnel holds a more senior position or has more experience than the individual being replaced.
- (c) The Supplier shall not charge the LCBO for the time spent by the replacement Key Personnel to become familiar with the status of the Services performed by the individual being replaced or to re-perform any tasks or activities that had been previously performed by the individual being replaced.

The Supplier shall maintain and apply backup procedures and replacement procedures for Key Personnel.

ARTICLE 7 PAYMENT FOR PERFORMANCE AND AUDIT

7.1 Payment According to Rates

- (a) Subject to the Supplier's performance of the Services in accordance with the terms of this Agreement, the LCBO shall pay the Supplier for the performance of the Services in accordance with the applicable Fees set forth in a Statement of Work.
- (b) If the Statement of Work specified charges on an Hourly Rate basis, the Supplier shall invoice the LCBO for the actual number of hours worked. The Supplier shall not invoice the LCBO for more than the applicable Ceiling Price. Any amount paid in excess of a Ceiling Price is deemed to be an overpayment unless there is a written Change Order that has been executed by the parties specifying an increase to the Ceiling Price.
- (c) For Services paid on a Fixed Price basis the Supplier shall not charge more than the Fixed Price, even if the work requires additional time to complete that would otherwise have brought the cost to the LCBO to an amount in excess of the Fixed Price unless there is a written Change Order that has been executed by the parties. Any amount charged in excess of the Fixed Price shall be deemed to be an overpayment unless there is a written Change Order that has been executed by the parties specifying an increase to the Fixed Price.
- (d) The Supplier shall repay any overpayment promptly, but in any event within five (5) Business Days, upon demand by the LCBO.
- (e) Any amount owing pursuant to a Statement of Work, shall be adjusted in accordance with any applicable Credits.

7.2 All-Inclusive Fees and No Disbursements

Except as expressly set out in a Statement of Work, the Fees are all-inclusive. The LCBO is not responsible for any charges, expenses, disbursements or other related fees or costs incurred by the Supplier except as expressly set out in the applicable Statement of Work, including, but not limited to, expenses incurred for travel, accommodation, couriers, printing and long-distance telephone; and expenses related to hospitality, incidentals, meals or food including, but not limited to, expenses in respect of: i) meals, snacks or beverages; ii) gratuities, iii) laundry, dry cleaning and valet services; iv) dependent care; or v) personal telephone calls; vi) and any overhead or other administrative costs.

7.3 Invoices and Payment

- (a) For the Services, subject to acceptance of all the applicable Deliverables by LCBO as set forth hereunder, the Supplier shall invoice LCBO for all Fees in accordance with the Fee calculation set forth in the applicable Statement of Work.

The invoices shall include as applicable (i) a brief description of the Services provided; (ii) payment amount owed, and full accounting of how Supplier arrived at such amount; (iii) a brief description of the event giving rise to the amount payable (e.g., the achievement of a particular milestone); (iv) any applicable Credit or as a separate line item together with supporting details; and (v) taxes identified as a separate item. Subject to the Supplier's compliance with the provisions of the Agreement, LCBO shall pay such invoices in accordance with Article 7.4.

7.4 Invoices and Payment Process

The LCBO shall approve or reject each invoice within fifteen (15) Business Days of receipt. In the event that the LCBO rejects an invoice, it shall so advise the Supplier promptly in writing and the Supplier shall provide additional information as reasonably required by the LCBO to substantiate the invoice. An invoice must be approved by the LCBO before any payment is released. The LCBO shall pay each approved invoice within fifteen (15) days of such approval. If the LCBO receives an invoice which it reasonably believes specifies a charge which is not valid and properly due (a "**Disputed Charge**"):

- a) the LCBO will notify Supplier within five (5) days after receipt of such invoice of the Disputed Charge and pay the non-disputed portion thereof as contemplated above;
- b) the parties will begin, within five (5) days after the receipt of the notice described above, to resolve the dispute in good faith; and
- c) if the dispute cannot be resolved in such period, the dispute shall be subject to the dispute resolution procedures set out in Article 15 (Dispute Resolution);
- d) once the dispute has been resolved, Supplier will issue a new invoice for any amounts found due as part of that resolution and the LCBO will pay the amount indicated in such new invoice within fifteen (15) days following its receipt thereof.

7.5 Hold Back or Set Off

The LCBO may set off amounts payable to the Supplier including Credits owed in connection with missed service levels against the Fees.

7.6 Payment of Taxes and Duties

Unless otherwise stated, the Supplier shall include Harmonized Sales Tax as a separate line item on all invoices, where applicable, and such taxes shall be paid by LCBO.

7.7 Withholding Tax

The LCBO shall withhold any applicable withholding tax from amounts due and owing to the Supplier under the Agreement and shall remit it to the appropriate government in accordance with applicable tax laws.

7.8 Document Retention and Audit

During the Term and for seven (7) years after the expiration of the Term of the Agreement the Supplier shall maintain all necessary records to substantiate all charges and payments under the Agreement within the prior seven (7) year period. Subject to the Supplier's confidentiality obligations with third parties, during the Term, and for seven (7) years after the Term, the Supplier shall permit and reasonably assist the LCBO in conducting audits of the operations of the Supplier to verify such charges and payments provided that the LCBO shall not have access to any records related to Supplier's cost of providing services, profit or loss, or third party charges to Supplier not payable by the LCBO as pass through charges. The Supplier shall, at its cost, retain and maintain in an organised, accessible mode, all such books, records, accounts and supporting data for such period, and shall reasonably assist the LCBO in conducting such audit. The LCBO shall provide the Supplier with at least fifteen (15) Business Days prior notice of its requirement for such audit and will conduct the audit during business hours and at the LCBO's costs. LCBO will be permitted to audit only once per calendar year. The Supplier's obligations under this Article shall survive the termination or expiry of this Agreement and of every Statement of Work.

S17, S 18(1) Economic Interest

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7.10 Benchmarking

Without limiting Article 7.9, LCBO will have the right, no earlier than two (2) years following the Effective Date, and no more than once every year of the Term thereafter, at its sole cost and expense, to retain a third party to benchmark all of the Services, Service Levels and Fees in the aggregate, in accordance with the provisions of this Article 7.10. Each benchmarking exercise will be conducted by a third party retained in accordance with this Article 7.10 (the "Benchmarker").

a) Identification and Retention of Benchmarker

- i) For each benchmarking, the Parties, acting reasonably and without delay, will agree upon a Benchmarker from the following list, or, in the event none of the below Benchmarkers are able to perform the benchmarking services required, such other benchmarking service provider reasonably acceptable to both parties:

- i) ISG ProBenchmark;
- ii) The Hackett Group; and
- iii) Gartner.

b) Parameters of Engagement

- i) Each benchmarking exercise must relate to all of the Services and the Fees payable by LCBO in the aggregate, and the Service Levels in respect of such aggregated Services (the combination of the Services, the Fees and the Service Levels being the "**Benchmarked Offering**"). In performing each benchmarking, the Benchmarker will compare the Benchmarked Offering to comparable combinations of services, service levels and fees (each, a "**Comparable Service Offering**") as the Benchmarker determines in its sole discretion are appropriate for a meaningful and accurate benchmarking.
- ii) Prior to the commencement of each benchmarking exercise, the Parties, acting reasonably and without delay, will agree upon the time frame in which the benchmarking is to be conducted.
- iii) The Parties agree that the Benchmarker will choose the normalization factors to be taken into account in comparing the Benchmarked Offering to the Comparable Service Offerings, but acknowledge they may include (by way of example only):
 - I. geographic location of the entity providing each Comparable Service Offering;
 - II. economies of scale;
 - III. duration of the contractual commitment for each Comparable Service Offering;
 - IV. workload and complexity factors, including the operating environment in which each Comparable Service Offering is provided; or
 - V. any other normalization factors reasonably appropriate to the benchmarking.
 - IV. Supplier will provide any data requested by LCBO that is relevant to the Benchmarked Offering for the purposes of performing a benchmarking.
 - V. the Benchmarker will not use data for the Comparable Service Offering that is more than six (6) months old.

c) Presentation of Results

- i) Upon completion of the benchmarking exercise, the Benchmarker will deliver to LCBO and Supplier a draft report setting out the details of its findings (the "**Draft Benchmarking Report**"). The Draft Benchmarking Report will include:

- I. a ranking of the Fees in the Benchmarked Offering and the Comparable Service Offerings;
 - II. a ranking of the Service Levels in the Benchmarked Offering and the Comparable Service Offerings; and
 - III. details surrounding the normalization factors taken into account in comparing the Benchmarked Offering to the Comparable Service Offerings.
- ii) Within fifteen (15) days of receiving the Draft Benchmarking Report, either Party may provide feedback on the Draft Benchmarking Report to the Benchmarking Report, failing which a Party will be deemed to have agreed with the contents and conclusions of the Draft Benchmarking Report. Following receipt of such feedback, the Benchmarking Report will deliver to LCBO and Supplier a final benchmarking report (the "**Final Benchmarking Report**"), which will take the Parties' feedback into consideration, in the Benchmarking Report's discretion.
 - iii) If the Final Benchmarking Report concludes that the Fees in the Benchmarked Offering are more than the average fees of the Comparable Service Offerings, then Supplier will lower the Fees by such percentage difference.
 - iv) Any Fees reduction made in accordance with Article 7.10 will:
 - I. be automatically implemented at the next Fee payment date and will apply thereafter throughout the Term, unless amended pursuant to the terms of this Agreement;
 - II. be backdated with effect from the date the Benchmarking Report commenced the benchmarking process, with any credit to be paid to LCBO; and
 - III. cause the Parties to execute an amendment to this Agreement to reflect any amended terms and conditions, as and where applicable.

ARTICLE 8 LEGAL RELATIONSHIP BETWEEN LCBO, SUPPLIER AND THIRD- PARTIES

8.1 Supplier's Power to Contract

The Supplier represents and warrants that it has the full right and power to enter into the Agreement and that there is no agreement with any other entity that would in any way interfere with the rights of the LCBO under the Agreement.

8.2 Supplier Not a Partner, Agent or Employee

The Supplier does not have any power or authority to bind the LCBO or to assume or create any obligation or responsibility, express or implied, on behalf of the LCBO. The Supplier shall not hold out itself or its Personnel as an agent, partner or employee of the LCBO. Nothing in the Agreement has the effect of creating an employment, partnership or agency relationship between the LCBO and the Supplier (or any of the Supplier's directors, officers, Personnel, agents, partners, affiliates, volunteers or Subcontractors) pursuant to the *Employment Standards Act, 2000*, S.O. 2000, c. 41, as amended, or any other legislation or at common law, or constitute an appointment under the *Public Service of Ontario Act, 2006*, S.O. 2006, c. 35, as amended. The Supplier is solely responsible for all legally required employer and employee contribution and deductions, compensation and benefits for itself and its Personnel.

8.3 Responsibility of Supplier

The Supplier is liable for the acts and omissions of its directors, officers, Personnel, agents, partners, affiliates, volunteers and Subcontractors who are providing Services under this Agreement. This paragraph is in addition to any and all of the Supplier's liabilities under the Agreement and under the general application of law. The Supplier shall advise these individuals and entities of its obligations under the Agreement and, without limiting the generality of the foregoing, shall take appropriate action to require compliance with i) the Agreement generally and ii) with the requirements of Article 9 (Confidentiality) of the Agreement. In addition to any other liabilities of the Supplier pursuant to the Agreement or otherwise at law or in equity, the Supplier may be liable for all damages, costs, expenses, losses, claims or actions arising from any breach of the Agreement resulting from the actions of the above mentioned individuals and entities.

8.4 Subcontracting and Assignment

Except as mutually agreed to between the parties in a Statement of Work, the Supplier shall not subcontract or assign the whole or any part of the Agreement or any monies due under it without the prior written consent of the LCBO. Such consent shall be in the sole discretion of the LCBO and subject to the terms and conditions that may be imposed by the LCBO. Without limiting the generality of the conditions which the LCBO may require prior to consenting to the Supplier's use of a Subcontractor, every contract entered into by the Supplier with a Subcontractor shall substantially reflect the terms and conditions of the Agreement as far as applicable to those parts of the Services or Deliverables provided by the Subcontractor. Nothing contained in the Agreement shall create a contractual relationship between any Subcontractor or its employees and the LCBO. Provided that the Supplier has received prior written notice of the LCBO's intent to assign, the LCBO may assign without the consent of the Supplier all or any part of this Agreement or the whole or any part of any Statement of Work to Ontario, any LCBO affiliate or subsidiary, or where such assignment is necessitated by outsourcing, privatizing, partnering or similar activity, to a non-governmental entity. Except to the extent otherwise mutually agreed to in writing, no assignment pursuant to this Agreement will relieve such assigning party of any of its obligations under the Agreement or any Statement of Work and for the avoidance of all doubt, such assigning party shall remain responsible therefor.

8.5 Duty to Disclose Change of Control

In the event that the Supplier undergoes a change in control the Supplier shall promptly disclose such change in control to the LCBO.

8.6 Conflict of Interest

The Supplier shall i) avoid any Conflict of Interest in the performance of its contractual obligations; ii) disclose without delay any actual or potential Conflict of Interest that arises during the performance of its contractual obligations; and iii) comply with any requirements prescribed by the LCBO to resolve any Conflict of Interest. In addition to all other contractual rights or rights available at law or in equity, the LCBO may, at its sole and absolute discretion, immediately terminate the Agreement upon giving notice to the Supplier where i) the Supplier fails to disclose an actual or potential Conflict of Interest; ii) the Supplier fails to comply with any requirements prescribed by the LCBO to resolve a Conflict of Interest; or iii) the Supplier's Conflict of Interest cannot be resolved. This paragraph shall survive any termination or expiry of the Agreement.

8.7 Contract Binding

The Agreement enures to the benefit of and is binding upon the parties and their successors, executors, administrators and their permitted assigns.

ARTICLE 9 CONFIDENTIALITY

9.1 Confidential Information

Subject to the *Freedom of Information and Protection of Privacy Act* ("FIPPA"), during and following the Term, each party, as the receiving party, shall i) keep all Confidential Information of the disclosing party confidential and secure; ii) limit the access or disclosure of Confidential Information of the disclosing party to only those employees, Subcontractors and professional advisors (including auditors) who have a need to know it or who have been specifically authorized to have such access or disclosure; iii) not directly or indirectly disclose, destroy, exploit or use any Confidential Information of the disclosing party (except for the purpose of providing the Services and the continued operation thereof, as necessary to enforce the receiving party's rights hereunder or under a Statement of Work or except if required for the purpose of receiving professional services or conducting an audit or by order of a court or tribunal or as otherwise required by law), without first obtaining: i) the written consent of the disclosing party and ii) in respect of any Confidential Information of the disclosing party about any third-party, the written consent of such third-party. The Supplier shall provide the LCBO access to retrieve LCBO Confidential Information in Supplier's possession as and when required by LCBO during the Term of this Agreement and for the Termination Assistance Period, if any. Notwithstanding the foregoing or any other provision of the Agreement:

- (a) it is understood and agreed that the Supplier's computer system and the computer systems of persons and legal entities to whom the LCBO Confidential Information was or may be disclosed in accordance with this Agreement, may automatically back-up the LCBO Confidential Information disclosed to it or them. To the extent that such computer back-up procedures create copies of the LCBO's Confidential Information, Supplier may retain such copies in its archival or back-up computer storage for the period it normally archives backed-up computer records, provided that such back-up copies shall be subject to the provisions of this Agreement until the same are destroyed, and shall not be accessed by Supplier during such period of archival or back-up storage other than as might be permitted herein; and
- (b) Supplier may retain any LCBO Confidential Information to the extent required under applicable law (including audit requirements), provided that i) such retained LCBO Confidential Information remains subject to the provisions of this Agreement until same are destroyed, and ii) which during such period of retention shall not be accessed for any reason other than as required to satisfy Supplier's obligations under applicable law.

9.2 Restrictions on Copying

The parties shall not copy any Confidential Information, in whole or in part, unless copying is reasonably necessary for the provision of the Services or required for the purpose of complying with applicable laws. On each copy made by the Supplier, the Supplier must reproduce all notices which appear on the original.

9.3 Injunctive and Other Relief

The parties acknowledge that breach of any provisions of this Article may cause irreparable harm to the disclosing party or to any third-party to whom the disclosing party owes a duty of confidence, and that the injury to the disclosing party or to any third-party may be difficult to calculate and inadequately compensable in damages. The receiving party agrees that the disclosing party may be entitled to obtain injunctive relief (without proving any damage sustained by it or by any third-party) or any other remedy against any actual or potential breach of the provisions of this Article.

9.4 Notice and Protective Order

If the receiving party or any of its directors, officers, employees, agents, representatives or advisors become legally compelled to disclose any Confidential Information of the other party, the receiving party shall, to the extent permitted under applicable law, provide the disclosing party with prompt notice to that effect in order to allow the disclosing party to seek one or more protective orders or other appropriate remedies to prevent or limit such disclosure, and it shall co-operate with the disclosing party and its legal counsel to the fullest extent. If such protective orders or other remedies are not obtained, the receiving party will disclose only that portion of Confidential Information which the receiving party is legally compelled to disclose, only to such person or persons to which the receiving party is legally compelled to disclose, and the receiving party shall provide notice to each such recipient (in co-operation with legal counsel for the disclosing party) that such Confidential Information is confidential and subject to non-disclosure on terms and conditions equal to those contained in the Agreement and, if possible, shall seek to obtain each recipient's written agreement to receive and use such Confidential Information subject to those terms and conditions.

9.5 Supplier's Advisors, Agents, Personnel and Subcontractors

The Supplier shall advise its advisors, agents, Personnel and Subcontractors of the requirements of this Article and take appropriate action to ensure their compliance with its terms. In addition to any other liabilities of the Supplier pursuant to the Agreement or otherwise at law or in equity, the Supplier shall be liable for any and all liability, losses, costs, damages, expenses (including all reasonable legal, expert and consultant fees), causes of action, and Proceedings arising from any non-compliance with this Article by the Supplier's advisors, agents, Personnel and Subcontractors.

9.6 Aggregated Statistical Information

LCBO owns the anonymized, aggregated and statistical data derived from the operation of any Services for LCBO, including the number of records in a Service, the number and types of transactions, configurations, and reports processed in a Service and the performance results for the Service (the "**Aggregated Statistical Information**"). LCBO grants Supplier a perpetual, non-revocable, royalty-free, worldwide, non-transferrable, non-assignable, non-sublicensable license to utilise the Aggregated Statistical Information for purposes of operating Supplier's business, provided that Supplier's use of Aggregated Statistical Information will not reveal the identity of LCBO Confidential Information to any third party.

9.7 Privacy Provisions

9.7.1 Privacy

The Supplier represents warrants and covenants that it:

- (a) will keep all Records that it receives, and which have not previously been disposed of in accordance with this Agreement, secure;
- (b) will provide all Records it has received and which have not previously been disposed of in accordance with this Agreement, to the LCBO within seven (7) calendar days of being directed to do so by the LCBO for any reason including an access request or privacy issue;
- (c) does not acquire any express or implied rights, title or interest in Personal Information, which shall at all times be deemed to remain the exclusive property of the LCBO;

- (d) will designate a representative who is responsible for all aspects of privacy and confidentiality required hereunder, and provide the name and contact information of such representative to the LCBO;
- (e) will collect, use, maintain and disclose Personal Information accurately and solely on behalf of the LCBO for the purposes of an in accordance with the terms of this Agreement;
- (f) will not access any Personal Information unless (i) the LCBO determines in its sole discretion that access is permitted under FIPPA or (ii) is necessary in order to provide the Services;
- (g) will not directly or indirectly use, collect, disclose or destroy any Personal Information, including where such Personal Information is contained within any Records, LCBO Data, for any purposes that are not authorized by the LCBO pursuant to this Agreement;
- (h) will ensure the security and integrity of Personal Information, including but not limited to such Personal Information collected at any point-of-sale terminal, and keep it in a physically secure location safe from loss, alteration or destruction and to implement, use and maintain the most appropriate products, tools, measures and procedures to do so;
- (i) will restrict access to Personal Information only to those of its directors, officers, Personnel, agents, partners, affiliates, volunteers or Subcontractors who have a need to access it for the purpose of providing the Services or who have been specifically authorized by the LCBO to have such access for the purpose of providing the Services;
- (j) will maintain Personal Information only for so long as to fulfil the purposes for which it was collected or as may be required by law, or as otherwise advised by LCBO in writing;
- (k) subject to Article 9.1, when advised to do so by the LCBO, will take all necessary steps to promptly, selectively and permanently delete any Record, or item of LCBO Data or Personal Information, or portion thereof, whether to support compliance with LCBO's records and data retention requirements, a third party LCBO customer request, or for any other business or legal requirement of LCBO;
- (l) subject to Article 9.4, will promptly refer to the LCBO any requests received for access to, amendment of or complaints about Personal Information within the care and control of Supplier, and to co-operate with the LCBO in providing timely access to same;
- (m) will amend, rectify, delete or update Personal Information only upon receiving instruction from the LCBO within the context of Supplier's provision of the Services;
- (n) upon thirty (30) Business Days prior written notice, the LCBO may, at its own expense, perform or have performed by a third party auditor acceptable to Supplier acting reasonably, an on-site audit of Supplier's privacy and information security program. Such audit shall be limited in length to five (5) Business Days and shall be limited to those areas that are directly related to this Agreement. At the LCBO's sole option, in lieu of an onsite audit, Supplier will complete, within forty-five (45) calendar days of receipt from LCBO, an audit questionnaire provided by LCBO regarding Supplier's privacy and information security program. Such questionnaire may not be issued to Supplier any more frequently than once in each calendar year of the Term;

- (o) will promptly notify LCBO's SVP, IT and SVP, Legal, or to such other party as directed by LCBO, from time to time, but in no event longer than **S17, S14(1)(i)(i)** from becoming aware of the occurrence of any breach or incident concerning or affecting any LCBO Confidential Information, whether such breach or incident resulted in the loss or unauthorized access of LCBO Confidential Information (a "Security Breach"). To the extent permitted by law, Supplier shall notify LCBO in advance of notifying any regulatory or other authority, media or other third party concerning any Security Breach. In each case, Supplier will provide all known facts and details, and undertakes to provide LCBO with ongoing updates with respect to the Security Breach except to the extent prohibited by law;
- (p) with **S17, S14(1)(i)(i), S** : the occurrence of a Security Breach, Supplier shall engage a best-in-class third party breach response investigator to i) conduct a breach response audit and ii) thereafter provide Supplier and LCBO with its findings in an audit report. Supplier shall be responsible for all costs associated with such third party conducted breach response audit;
- (q) subject to Article 11.4(a)(ii), will, where a Security Breach is attributable to Supplier or a Supplier Subcontractor related to the provision of the Services, be responsible for i) all costs associated with breach remediation of such Security Breach, including but not limited to, any and all costs related to credit or identity theft protection services for all persons whose Personal Information was affected by such Security Breach, and ii) for the reimbursement of all of LCBO's reasonable expenses related to the procurement of the foregoing credit or identity theft protection services;
- (r) will not maintain or store any Personal Information (other than IP addresses and LCBO employee name, LCBO employee email addresses and related login credentials) outside of Canada unless Supplier has: i) obtained the LCBO's prior written consent to do so; and ii) all such Personal Information that is to be maintained or stored outside of Canada is anonymized;
- (s) will promptly assist LCBO in responding to requests to allow access to, correct or delete any Personal Information, including providing LCBO with a copy of all relevant Personal Information; and
- (t) subject to Article 9.1, will, on expiry, completion or termination of this Agreement, promptly ensure the return or erasure of all Personal Information (other than IP addresses and business contact information) in its custody or under its control.

9.7.2 Access to Supplier Confidential Information Through Freedom of Information.

Subject to the LCBO's compliance with Article 9.4, Supplier further agrees that any Supplier Confidential Information supplied to the LCBO may be disclosed by the LCBO where it is obligated to do so under FIPPA, by an order of a court or tribunal or pursuant to a legal proceeding.

Supplier acknowledges and agrees that FIPPA applies to and governs all Records and may require the disclosure of such Records to third parties. Without limiting the LCBO's obligations under Section 9.4, in the event the LCBO receives a request under FIPPA which requires the disclosure of Supplier Confidential Information, including but not limited to the contents of this Agreement or any SOW, the LCBO shall, subject to provisions of FIPPA in place at the time of the request, undertake to notify the Supplier in writing of its right to provide detailed and specific written submissions to explain what portions of the requested Supplier Confidential Information, in the Supplier's view, should be exempt from disclosure under the provisions of s. 17(1) of FIPPA. The LCBO shall consider any such submissions that are received within the timeframes specified under s. 28 of FIPPA in making its disclosure decision, and notify the Supplier of such decision in writing. In the event the Supplier disagrees with the LCBO's decision, it shall have the right to appeal the decision to the Information and Privacy Commissioner of Ontario.

9.8 Business Continuity

Supplier shall at all times comply with the business continuity and disaster recovery obligations set forth in Schedule D to this Agreement.

ARTICLE 10 INTELLECTUAL PROPERTY

10.1 No Use of LCBO Marks

Neither party shall use any mark or logo of the other party except where required to perform an obligation, or enforce a right, set forth hereunder, and only if it has received the prior written permission of the party owning such mark or logo to do so.

10.2 Background IP

- (a) All Intellectual Property, including, without limitation, all materials, information, data, records, web pages, designs, platforms, applications, specifications, methods, know-how, work product, documentation, software programs and code, owned or licensed by a Party prior to the execution of this Agreement or prepared outside the scope of the Services, and all Intellectual Property Rights therein (the "**Background IP**") that is supplied or used by a Party to perform its obligations under this Agreement or a Statement of Work, shall continue to belong exclusively to such Party.
- (b) All modifications, enhancements, updates, upgrades (if applicable), additions and developments to any Background IP of Supplier that are developed solely from the Background IP, including Software, of the Supplier shall form part of Supplier's Background IP and remain the property of Supplier.
- (c) All modifications, enhancements, updates, upgrades, additions and developments to any Background IP of the LCBO that are developed solely from the Background IP of the LCBO shall form part of the LCBO's Background IP and remain the property of the LCBO.
- (d) The LCBO shall license the LCBO Intellectual Property to Supplier pursuant to a revocable, non-exclusive, non-transferable, fully paid-up, and royalty-free license for the Term of this Agreement to use, reproduce, display, perform, modify, enhance, and create derivative works of the LCBO Intellectual Property for the sole and limited purpose of performing Services for the LCBO pursuant to this Agreement.

10.3 Ownership of Intellectual Property

- (a) Except for Supplier's Background IP contained therein, the LCBO shall be the sole owner of all Intellectual Property Rights and all right, title and interest in any Deliverables created specifically for the LCBO under this Agreement ("**Newly Created Materials**") and no use of the same shall be made except with written approval from the LCBO. All such Newly Created Materials are to be delivered to the LCBO after completion of the project unless otherwise specified. All Intellectual Property Rights in Newly Created Materials shall accrue continuously to the LCBO as the Newly Created Materials are continuously created. Except for Supplier's Background IP contained therein, the Supplier irrevocably assigns to and in favour of the LCBO and the LCBO accepts all Intellectual Property Rights and every right, title and interest in and to all Newly Created Materials, immediately following the creation thereof, for all time.
- (b) Where Newly Created Materials contain Supplier's Background IP, Supplier grants the LCBO a: i) non-exclusive, non-transferable, irrevocable, royalty-free right and license to use, copy, make derivative works of, distribute, display, perform and transmit solely for its internal business purposes any such Supplier Background IP incorporated in or necessary for the use of the Newly Created Materials in accordance with the terms of the Agreement or applicable Statement of Work; and ii) the right to sublicense any such Supplier Background IP incorporated in or necessary for the use of the Newly Created Materials to its service providers and contractors, to the same extent that the LCBO may use the Supplier Background IP under the licence herein granted to perform such services for the benefit of the LCBO.
- (c) Except for Supplier's Background IP contained therein, Supplier: i) irrevocably assigns and agrees to assign to the LCBO all Intellectual Property Rights and every right, title and interest in Canada, U.S. and worldwide in the Newly Created Materials; and ii) shall assist and shall require all other persons (including Subcontractors) to do all things reasonably necessary to protect and perfect LCBO ownership of LCBO Intellectual Property, including any filings, registrations, execution and delivery of unconditional and irrevocable, moral rights waivers which any person or individual may have in LCBO Intellectual Property throughout the world (including the moral rights prescribed by the applicable laws of Canada, are waived and that such waiver will inure to the benefit of LCBO and its assigns).

10.4 LCBO Information

Notwithstanding anything to the contrary in this Agreement, the parties acknowledge and agree that any and all Records, LCBO Data, LCBO Confidential Information and/or Personal Information, whether pre-existing, resulting or emanating from this Agreement, shall at all times remain the sole and exclusive property of LCBO.

10.5 LCBO Intellectual Property

To the extent the LCBO provides Supplier any intellectual property in connection with this Agreement, including LCBO Background IP, the LCBO represents and warrants to Supplier that such intellectual property does not and will not infringe or misappropriate the Intellectual Property Rights of any person and the LCBO is and will be the legal and beneficial owner or authorized licensor of all Intellectual Property Rights in such intellectual property and has the full power and authority to grant the rights in the intellectual property without the consent of any person.

10.6 Suggestions and Feedback

The LCBO acknowledges and agrees that under no circumstances shall any disclosure of any idea or suggestion (collectively, "Suggestions") by the LCBO or its representatives to the Supplier be subject to any obligation of confidentiality or expectation of compensation. By submitting a Suggestion to the Supplier, the LCBO assigns and waives any and all rights in the Suggestion, and Supplier is free to implement and use the Suggestion if desired, as provided by the LCBO or as modified by the Supplier, without obtaining permission or license from the LCBO or from any third party.

ARTICLE 11 INDEMNITY

11.1 Duty to Defend and Indemnify

- (a) Subject to Article 11.4, Supplier shall, both during and following the Term of this Agreement, at its expense: defend, indemnify and hold harmless the LCBO Indemnified Parties from and against all allegations, accusations, claims, demands, applications, petitions, suits and proceedings of any nature whatsoever (collectively, "**Claims**") that may be brought against or upon any of the LCBO Indemnified Parties that may result from, arise from or are in any way related to:
- (i) any act or omission on the part of Supplier, or its Subcontractors or their respective Personnel, successors, assigns, agents or representatives in the performance of its obligations under this Agreement;
 - (ii) any breach of any obligation in Article 9 (Confidentiality and Privacy) howsoever occasioned by Supplier, its Subcontractors or their respective Personnel, successors, assigns, agents or representatives;
 - (iii) any damage to real or personal property that is either owned or leased by the LCBO or others, howsoever occasioned by Supplier, its Subcontractors or their respective Personnel, successors, assigns, agents or representatives performing obligations under this Agreement;
 - (iv) any personal or bodily injury to any Person or Persons, including death resulting at any time therefrom, howsoever occasioned by Supplier, its Subcontractors or their respective Personnel, successors, assigns, agents or representatives, performing obligations under this Agreement; and
 - (v) fraud, gross negligence or wilful misconduct of Supplier or of any of its directors, officers, agents or employees in the performance of its obligations under this Agreement.

For the purposes of this Agreement, "gross negligence" shall mean: any act performed in connection with providing the Services that is (a) a substantially marked and flagrant departure from the duty to abide by the rules of conduct normally applicable to the provision of such Services under the circumstances in which such Services are provided or (b) intended to inflict, or which is in reckless disregard of, or wanton indifference to harmful consequences which Supplier knew or should have known could result from such act.

11.2 Intellectual Property Defence and Indemnity

- (a) Subject to Article 11.4, Supplier will, at its expense, defend, indemnify and hold harmless the LCBO Indemnified Parties from and against all Claims and indemnify, and hold harmless the LCBO Indemnified Parties from and against all Losses whatsoever that any of them may sustain, suffer, incur or be liable for, or that may result from, arise from or are in any way incidental to any such Claims brought against any of the LCBO Indemnified Parties to the extent that the Claim is related to or arises from: i) the performance of the Services by the Supplier (or its Personnel, Subcontractors or others for whom it is responsible at law); or ii) the use by any Indemnified Parties of anything supplied by the Supplier (or its Personnel, Subcontractors or others for whom it is responsible at law), which infringes any third person's Intellectual Property Rights including, without limiting the generality of the foregoing, any copyright, trade secret, patent or industrial design rights.
- (b) Supplier will not be liable under the indemnity in Article 11.2(a) above, to the extent any such infringement of any Intellectual Property Rights of any third person is attributable to:
 - (i) modifications to the Deliverables or Services made by the LCBO which have not been performed or approved by Supplier (for this purpose, normal use of the Deliverables or Services will not be considered a modification);
 - (ii) use of the Deliverables or Services in combination with items not provided by or identified to Supplier in the applicable Statement of Work as items with which the Deliverables or Services will inter-operate (however this exception does not apply to the use of Deliverables or Services with commercially available computers or commercially available system software); or
 - (iii) the incorporation of requirements, designs or specifications provided by the LCBO that themselves infringe the Intellectual Property Rights of a third party.
- (c) If the Deliverable (or any part thereof) or anything supplied by the Supplier (or its Personnel, Subcontractors or others for whom it is responsible at law) becomes, or in Supplier's opinion is likely to become, the subject of a claim based on an alleged infringement or breach as aforesaid, Supplier may, at its expense and option, with prior written notice to the LCBO, do one of the following:
 - (i) modify the applicable part of the Deliverable so that there is no longer any infringement or breach, provided that such modification does not adversely affect, in any material respect, the functionalities of the Deliverable as set out herein;
 - (ii) procure for the LCBO the right to continue to use the applicable part of the Deliverable; or
 - (iii) replace same with an equally suitable, functionally equivalent, compatible, non-infringing Deliverable, as applicable.

11.3 Supplier Participation in Proceedings

- (a) The Supplier shall, at its expense, to the extent requested by the LCBO, participate in or conduct the defence of any proceeding against any LCBO Indemnified Parties referred to in this Article 11 and any negotiations for their settlement. The Supplier shall not enter into any settlement unless it has obtained the prior written approval of the LCBO, which shall not be unreasonably withheld, conditioned or delayed. The LCBO agrees to co-operate with and assist the Supplier to the fullest extent possible in the proceedings and any related settlement negotiations. Supplier shall reimburse LCBO promptly and periodically for the reasonable costs properly incurred in providing such cooperation (including reasonable legal fees and expenses); and remain responsible to the LCBO for any Losses pursuant to Supplier's indemnification obligations hereunder.
- (b) The LCBO may elect to participate in or conduct the defence of any such proceeding by notifying the Supplier in writing of such election without prejudice to any other rights or remedies of the LCBO under the Agreement, at law or in equity and the Supplier agrees to co-operate with and assist the LCBO to the fullest extent possible in the proceedings and any related settlement negotiations. Supplier shall reimburse LCBO promptly and periodically for the reasonable costs properly incurred in defending against the Claim (including reasonable legal fees and expenses); and remain responsible to the LCBO for any Losses pursuant to Supplier's indemnification obligations hereunder.

11.4 Limitation on Liability

- (a) EXCEPT FOR THE INDEMNIFICATION OBLIGATIONS STIPULATED IN ARTICLES 11.1(A)(IV), 11.1(A)(V), AND 11.2, AND SUBJECT TO ARTICLE 11.4(B):
- (i) SUPPLIER'S AGGREGATE LIABILITY UNDER THE AGREEMENT AND ALL STATEMENTS OF WORK ENTERED INTO UNDER THIS AGREEMENT IS LIMITED TO **S17, S 18(1)** AND **E i**
- (ii) IN NO EVENT SHALL EITHER PARTY, ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, CONTRACTORS OR AFFILIATES, BE LIABLE FOR ANY CLAIM, IN CONNECTION WITH THIS AGREEMENT EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OR CERTAINTY OF SUCH DAMAGES, FOR: (A) INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES; AND/OR (B) DAMAGES FOR LOSS OF PROFITS OR REVENUE.
- (b) NOTWITHSTANDING ANYTHING TO THE CONTRARY IN ARTICLE 11.4(A), SUPPLIER'S AGGREGATE LIABILITY UNDER THE AGREEMENT AND ALL STATEMENTS OF WORK ENTERED INTO UNDER THIS AGREEMENT FOR ITS I) INDEMNIFICATION OBLIGATIONS UNDER ARTICLE 11.1(A)(II) (CONFIDENTIALITY), AND/OR II) A BREACH OF ARTICLE 9 (CONFIDENTIALITY), AND/OR ARTICLE 13 (INFORMATION SECURITY) IS **S17, S 18(1) Economic Interest S17, S 18(1)** AND **Economic**
- (c) EXCEPT FOR NON-PAYMENT, LCBO'S LIABILITY AND RESPONSIBILITY FOR ANY CLAIMS, DAMAGES, COSTS, OR LOSSES WHATSOEVER ARISING EITHER JOINTLY OR SOLELY FROM OR IN CONNECTION WITH THIS AGREEMENT (WHETHER OR NOT IN THE MANNER PERMITTED BY THIS AGREEMENT), INCLUDING CLAIMS FOR BREACH OF CONTRACT, TORT, MISREPRESENTATION, OR OTHERWISE, WILL BE LIMITED TO **S17, S 18(1) Economic Interest,)**.

ARTICLE 12 INSURANCE

12.1 Supplier's Insurance

The Supplier shall carry such insurance as may be required by the LCBO, and shall furnish satisfactory proof thereof when required by the LCBO within ten (10) days from the date of request. The Supplier shall maintain at its sole cost and expense, the following insurance coverages with financially sound and reputable insurance companies licensed to operate in the Province of Ontario:

- (a) Commercial General Liability insurance in the amount of at least **S17** per occurrence, that protects the Supplier and its employees and agents, from all claims, demands, actions, and causes of action that may be taken or made against the Supplier for any loss of or damage to property, personal injury or bodily injury including death, that may arise with respect to the operations of the Supplier. This policy must also include contractual liability, employer's liability, non-owned automobile liability, products and completed operations coverage as well as severability of interests and cross liability clauses. This policy must be endorsed to add the LCBO as an additional insured with respect to liability arising from the operations of the Supplier.
- (b) Automobile Liability insurance within the Supplier's Commercial General Liability insurance policy with limits of not less than \$ **S17** 100 occurrence. This policy must provide coverage for bodily injury and property damage arising out of the ownership, use or operation of all owned and/or leased automobiles.
- (c) Technology Professional Liability Insurance for financial loss arising out of an error, omission or negligent act in the rendering of Services in an amount not less than **S17, S 18(1) S17, S 18(1)** per claim and **S17, S 18(1) Economic** aggregate. Such policy shall be on a ~~claims made~~ basis and shall provide coverage for damages and defence costs. Supplier shall maintain technology professional liability coverage in place for a 3 year time period after termination of this contract by way of annual policy renewal, or purchase of extended reporting period coverage.
- (d) Cyber Liability insurance in an amount of not less than **S17** occurrence including third party limits of liability for network security breaches, privacy breach liability, and first party coverage for breach response services, and shall be extended to include the failure to adequately protect Confidential Information, including but not limited to Personal Information, and corporate information. If Technology Professional Liability and Cyber Liability coverages are insured in a combined form, separate policy aggregate limits of not less than the per occurrence limits are required.
- (e) Errors and Omissions Liability Insurance of at least **S17** occurrence.

The Supplier will provide the LCBO with 30 days' notice of cancellation or material change to these policies. These policies shall act as primary insurance and not excess to any other insurance available to the LCBO. Certificate(s) of Insurance evidencing the insurance coverage required above, must be submitted within ten (10) days of the contract award. The insuring company or authorized broker or agent must originally sign the Certificate(s). The insurance policies must be maintained in full force and effect at all times throughout the term of the contract or as specified.

This insurance requirement shall not be construed as limiting in any way the extent to which Supplier may be held responsible for the payment of damages to the LCBO or any other persons, resulting from its operations or the activities of any person or persons for whom it is liable. . Delivery to and examination or approval by the LCBO of any certificates of insurance or policies of insurance or other evidence of insurance shall not relieve the Supplier of any of its insurance obligations under the Contract. The LCBO shall be under no duty to either ascertain the existence of or to examine such certificate of insurance or policies of insurance or to advise the Supplier in the event that such insurance coverage is not in compliance with the requirements set out in the Contract. The Supplier is responsible for ensuring such compliance.

12.2 Proof of Insurance

The Supplier shall provide the LCBO with proof of the insurance required by the Agreement in the form of valid certificates of insurance that reference the Agreement and confirm the required coverage, on or before the commencement of the Agreement, and renewal replacements on or before the expiry of any such insurance. The insuring company or authorized broker or agent must originally sign the certificate(s) of insurance. The insurance policies must be maintained in full force and effect at all times throughout the Term of the Agreement. The Supplier will ensure every Subcontractor obtains and maintains insurance appropriate to such Subcontractor's activities under the Agreement. Such insurance obligations will be subject to the LCBO's review and approval, which approval will not be unreasonably withheld.

12.3 Proof of W.S.I.A. Coverage

If the Supplier is subject to the Workplace Safety and Insurance Act ("WSIA"), it shall submit a valid clearance certificate of WSIA coverage to the LCBO prior to the commencement date of the Agreement. In addition, the Supplier shall, from time to time at the request of the LCBO, provide additional WSIA clearance certificates. The Supplier shall pay when due, and shall require that each of its Subcontractors pays when due, all amounts required to be paid by it/its Subcontractors, from time to time during the Term of the Agreement, under the WSIA, failing which the LCBO has the right, in addition to and not in substitution for any other right it may have pursuant to the Agreement or otherwise at law or in equity, to pay to the Workplace Safety and Insurance Board any amount due pursuant to the WSIA and unpaid by the Supplier or its Subcontractors and to deduct such amount from any amount due and owing from time to time to the Supplier pursuant to the Agreement together with all costs incurred by the LCBO in connection therewith.

ARTICLE 13 INFORMATION SECURITY

13.1 Minimum Security Requirements.

Supplier shall maintain adequate and appropriate technological, physical and organizational security measures and standards for security and configuration with respect to its facilities, computer systems, employees, representatives, contractors, third parties under its control, and other matters relating to this Agreement, and without limiting the foregoing, Supplier shall ensure its information system satisfies the security requirements stipulated in Schedule B. Supplier shall take reasonable precautions, including the implementation of appropriate access controls to ensure that no unauthorized individuals are able to access the Confidential Information of the LCBO while in the possession of Supplier or through the Supplier's access privileges, and to ensure that those individuals who are authorized by or on behalf of Supplier to have access to the Confidential Information of the LCBO are bound by confidentiality restrictions no less stringent than those contained herein. In addition, Supplier shall take the same measures that it uses with its own Confidential Information to prevent the loss, damage, unauthorized modification or destruction of the Confidential Information of the LCBO in its possession or control or to which Supplier has access.

13.2 Data Protection

Without limiting Supplier's specific obligations set forth in Schedule B, Supplier shall ensure that all LCBO Data that it receives, and which has not previously been disposed of in accordance with this Agreement, is maintained, accessed, used and transmitted from, to and within a secure environment. Supplier and LCBO are each responsible for fully complying with any and all obligations applying respectively to them under applicable laws, including, but not limited to those laws pertaining to data protection and the protection of personal information. Supplier agrees that it shall provide LCBO with all reasonable assistance requested by and do all things reasonably requested by LCBO in the performance of the Services to comply with applicable privacy laws.

13.3 PCI Compliance

- (a) Supplier shall, at all times during the Term, and any renewal thereof, ensure the Services are performed in compliance with "Level 1" payment card industry ("PCI") data security standards ("DSS" and when referred to in conjunction with PCI as "PCI DSS"). Supplier shall be responsible for maintaining the security of any LCBO customers' payment card information provided to Supplier, in relation to Supplier's provision of the Services to LCBO. Supplier shall provide LCBO with their annual PCI DSS Level 1 attestation of compliance letter for their environment.
- (b) Supplier shall use a PCI point-to-point ("P2PE") solution in LCBO's store environment for in-person transactions. In situation where non-P2PE solution is used;
 - (i) Supplier shall provide LCBO with a roadmap for PCI P2PE certification of the Services on an annual basis; and
 - (ii) Supplier shall provide LCBO with either a) a non-listed encryption solution assessment document on an annual basis, or b) a qualified security assessor's analysis of the POS solution showing POS solution provides same level of E2E controls as mentioned in PCI P2PE standards and a detailed summary of a clean penetration test report of non-P2PE Services demonstrating that no unencrypted payment card information is flowing out of the non-P2PE Services in use at LCBO's stores, on a per request basis no more than once per year until a P2PE certified solution is deployed.
- (c) Supplier shall provide LCBO with their payment processor and point of interaction device provider's PCI attestation of compliance letter annually.

ARTICLE 14 TERMINATION AND EXPIRY

14.1 LCBO Termination for Cause

The LCBO may immediately terminate the Agreement upon giving notice to the Supplier where:

- (a) the Supplier breaches any provision in Article 9 (Confidentiality) and/or Article 13 (Information Security) of the Agreement;
- (b) the Supplier breaches the Conflict of Interest paragraph in Article 8.6 (Legal Relationship Between LCBO, Supplier and Third-Parties) of the Agreement;
- (c) the Supplier, prior to or after executing the Agreement, makes a material misrepresentation or omission or provides materially inaccurate information to the LCBO;
- (d) the Supplier undergoes a change in control which materially adversely affects the Supplier's ability to satisfy some or all of its obligations under the Agreement;

- (e) except as permitted hereunder or under a Statement of Work, the Supplier subcontracts for the provision of part or all of the Services or assigns the Agreement without first obtaining the written approval of the LCBO;
- (f) the Supplier becomes insolvent, or makes an assignment for the general benefit of creditors; or a petition in bankruptcy is made against the Supplier which is not successfully opposed by it within thirty (30) days; or the Supplier otherwise is adjudicated bankrupt by a court of competent jurisdiction; or any proceedings relating to the insolvency of the Supplier are commenced by or against the Supplier under any bankruptcy or insolvency laws; or any proceedings for the appointment of a trustee, custodian, receiver or receiver-manager or any other person with similar powers are commenced by or against the Supplier whether pursuant to a contractual relationship or otherwise; or any proceedings for a composition or arrangement with creditors under any applicable law are instituted by or against the Supplier;
- (g) the Supplier commences winding-up or liquidation proceedings or has such proceedings commenced against it; or
- (h) the Supplier ceases to carry on business in the ordinary course;

and the above rights of termination are in addition to all other rights of termination available at law, or events of termination by operation of law.

14.2 Dispute Resolution by Rectification Notice

Subject to the above paragraph, where the Supplier fails to comply with any of its obligations under the Agreement, the LCBO will issue a rectification notice to the Supplier setting out the manner and time-frame for rectification. Within ten (10) Business Days of receipt of that notice the Supplier shall either i) comply with that rectification notice; ii) if applicable, provide a rectification plan satisfactory to the LCBO, acting reasonably; or iii) dispute the alleged failure in accordance with Article 15 (Dispute Resolution). If the Supplier fails to comply with that rectification notice, provide a satisfactory rectification plan or dispute the alleged failure in accordance with Article 15, the LCBO may immediately terminate the Agreement. Where the Supplier has been given a prior three (3) rectification notices, the same subsequent type of non-compliance by the Supplier shall allow the LCBO to immediately terminate the Agreement.

14.3 Supplier Termination for Cause

- (a) Supplier may, at its sole discretion, terminate this Agreement or a Statement of Work for cause by providing written notice to the LCBO if the LCBO is in material breach of this Agreement or any Statement of Work and such breach is either (i) not capable of being cured or (ii) not cured to the satisfaction of Supplier, acting reasonably, within sixty (60) days of receipt of written notice from Supplier describing the breach.
- (b) Supplier may, at its sole discretion, terminate this Agreement or a Statement of Work, with immediate effect upon written notice to the LCBO in the event there is a change in law or in government with the result that the Go-Live Date will not occur, provided that in the event Supplier terminates pursuant to this Article 14.3(b), the LCBO shall pay the Supplier the Pre-Go-Live Termination Fee in accordance with Article 14.4(a).

14.4 Termination on Notice

The LCBO reserves the right to terminate the Agreement, without cause, upon one hundred (120) calendar days prior written notice to the Supplier.

The LCBO reserves the right to terminate a Statement of Work, without cause, upon sixty (60) calendar days prior written notice to the Supplier.

In the event (i) the LCBO terminates the Agreement or any Statement of Work, without cause; or (ii) the LCBO terminates the Agreement or any Statement of Work in accordance with Article 1.7 of the Agreement; or (iii) in the event Supplier terminates the Agreement or any Statement of Work in accordance with Article 14.3(b) of the Agreement:

- (a) Prior to the Go-Live Date, the LCBO shall pay the Supplier a fee in accordance with the following calculation (the **"Pre-Deployment Termination Fee"**):

$$(A/B) \times C$$

Where:

A = the number of whole days that have elapsed between January 1, 2018 and the effective date of termination up to a maximum of 180 days

$$B = 180$$

$$C = \text{S17}$$

- (b) In the event the LCBO terminates this Agreement, or any Statement of Work, without cause on or after the Go-Live Date, but prior to the one (1) year anniversary of the Go-Live Date, the LCBO shall pay the Supplier a fee in accordance with the following calculation (the **"Post-Deployment Termination Fee"**):

$$(A-B)/A \times C$$

Where:

$$A = 365$$

B = The number of whole days that have elapsed between the Go-Live Date and the effective date of termination of the Agreement

$$C = \text{S17}$$

in each case, within ninety (90) days of the effective date of termination.

14.5 Supplier's Obligations on Termination

In addition to Supplier's obligations pursuant to Article 14.8 hereunder, upon termination of the Agreement or any Statement of Work, the Supplier shall, in addition to its other obligations under the Agreement and at law:

- (a) provide the LCBO with a report detailing i) the current state of the provision of Services and Deliverables by the Supplier at the date of termination; and ii) any other information reasonably requested by the LCBO pertaining to the transition of the Services in-house or to an alternative service provider; and
- (b) execute such documentation as may be required by the LCBO to give effect to the termination of the Agreement.

14.6 Supplier's Payment Upon Termination

Upon termination, the LCBO is responsible for (i) payment of any termination fee pursuant to Article 14.4; (ii) payment for the Services provided under a Statement of Work up to and including the effective date of any termination; and (iii) the Transition Fee (if applicable).

14.7 Termination In Addition to Other Rights

The express rights of termination in the Agreement are in addition to and in no way limit any rights or remedies of either party under the Agreement, at law or in equity.

14.8 Termination Assistance

Where either party terminates this Agreement, Supplier shall, upon LCBO's request during the Termination Assistance Period, provide the termination assistance services in accordance with the following requirements (collectively the "**Termination Assistance Services**").

- (a) During the Termination Assistance Period, Supplier shall provide Services in accordance with the Agreement or the applicable Statement of Work. The quality and level of performance of the Services during the Termination Assistance Period will not be degraded. Without limiting the generality of the foregoing, during the Termination Assistance Period, i) Supplier will perform the Services with at least the same degree of accuracy, quality and responsiveness as it provided and was required to provide with respect to the Services during the Term; ii) Supplier will continue to provide the Services and LCBO will continue to pay the Fees as applicable for such Services and the parties will continue to be bound by the terms of this Agreement and the applicable Statement of Work; and iii) upon request and reasonable prior notice, Supplier will make personnel available to LCBO order to assist with technical aspects of the transition to a new supplier during normal business hours subject to payment of the Pre- or Post-Deployment Termination Fee or the Transition Fee to the extent applicable.
- (b) Supplier shall cooperate with LCBO to assist with the orderly transfer of the Services provided by Supplier hereunder to LCBO directly, or to a third party services provider, subject to payment of the Pre- or Post-Deployment Termination Fee or the Transition Fee to the extent applicable.

ARTICLE 15 DISPUTE RESOLUTION

15.1 Internal Resolution

- (a) In the event that any question, dispute, difference or claim arises out of or in connection with this Agreement, including a question regarding its existence, validity, performance or termination (each a "**Dispute**"), the parties shall initially attempt to resolve the Dispute in good faith in accordance with this Article 15. The Dispute may be referred to arbitration under paragraph b below at such time as is described hereunder.
- (b) In the event of a dispute, the parties shall work in good faith to resolve such Dispute through Governance Committees subject to the following provisions:

- (i) Every reasonable effort will be made by both parties to resolve any Dispute within the timeframes set by the Governance Committees. Should there be a requirement for additional time for resolution of the Dispute, additional time may be granted as a mutually agreeable extension period. If the Dispute is not resolved by the Governance Committees within ten (10) Business Days after one party notifies the other Party of a Dispute, either Party may require that the Dispute be referred to the Designated Executives for resolution.
- (ii) If the Designated Executives are unable to resolve the Dispute within fifteen (15) Business Days after the date on which one party gives notice to the other Party that the Dispute be referred to the Designated Executives, either Party may submit the Dispute to arbitration under Article 15.2, or take whatever action it deems necessary to protect its interests.
- (iii) If either party determines in its sole discretion at any time that the issue under Dispute is material to it and the resolution of it by the Governance Committees is not of sufficient expediency, it may initiate resolution of the Dispute by the Designated Executives as set forth above by giving written notice to the other party, and if the Dispute is not resolved by them as set forth above, either party may submit the Dispute to arbitration under Article 15.2, or take whatever action it deems necessary to protect its interests.

For the purpose of this Article 15, "Governance Committee" shall mean the following for LCBO:

IT Lead;
 Director, Procurement;
 and Manager, Finance.

and for Shopify:

VP of Plus; and
 Project Manager (or the employees performing the equivalent functions if titles have changed).

15.2 Arbitration

Subject to Article 15.1 above, Disputes will be resolved by arbitration under the *Arbitrations Act, 1991* (Ontario). The arbitration shall take place in Toronto, Ontario. The submitting party shall submit such Dispute to arbitration by providing a written demand for arbitration to the other party and the parties shall select a single neutral arbitrator with significant contract resolution experience. If the parties cannot agree on a single neutral arbitrator within fourteen (14) days after the written demand for arbitration is provided, then the arbitrator shall be selected pursuant to the provisions of the *Arbitration Act, 1991* (Ontario). The decision of the arbitrator in the matter shall be final and binding upon the parties and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction. Notwithstanding the foregoing, any such decision may be appealed to a court of competent jurisdiction based on an error of law or as expressly provided under Section 46(1) of the *Arbitration Act, 1991* (Ontario). The parties agree that the arbitrator shall have the power to award damages, injunctive relief and reasonable solicitors' fees and expenses to either party in such arbitration; provided that this arbitration provision does not prevent either party from seeking interim injunctive or other equitable relief from a court of competent jurisdiction.

IN WITNESS WHEREOF the parties hereto have executed the Agreement effective as of the date first above written.

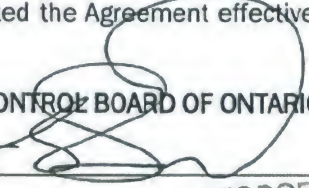
LIQUOR CONTROL BOARD OF ONTARIO

Signature: _____

Name:

Title:

Date of Signature:


GEORGE J. SOLEAS
President & Chief Executive Officer
Jan 19, 2018

SHOPIFY INC.

Signature: _____

Name: Lauren Vidulich

Title: VP, GM

Date of Signature: January 18, 2018

I have authority to bind the Supplier

**SCHEDULE A
FORM OF STATEMENT OF WORK**

This Statement of Work is made effective as of [date].

Shopify Inc. (the "**Supplier**") and Liquor Control Board of Ontario (the "**LCBO**") enter into this Statement of Work pursuant to the Agreement For Services made as of [Insert date], 2017 between the Supplier and the LCBO (such Agreement, as from time to time amended, is referred to as the "**Master Agreement**").

In consideration of their respective agreements set out below, the parties agree as follows:

1. **Structure** - The terms and conditions of the Master Agreement are hereby incorporated by reference in this Statement of Work to the same effect as if fully set out in this Statement of Work. All capitalized terms used in this Statement of Work without definition have the meanings ascribed to them in the Master Agreement. In the event of any conflict or inconsistency between any term or provision of this Statement of Work and any term or provision of the Master Agreement, the terms and provisions of the Master Agreement shall govern except to the extent that this Statement of Work expressly specifies otherwise.
2. **Statement of Work** - The Supplier agrees to provide to the LCBO and the LCBO agrees to acquire from the Supplier, the Services described in this Statement of Work upon and subject to the terms of this Statement of Work.
3. **Ceiling Price** - The Supplier shall provide Services under this Statement of Work for a Fees in accordance with the following schedule [INSERT FEE STRUCTURE], but not to exceed a Ceiling Price of C\$ [Insert maximum fee payable].
4. **SOW Start Date:** [insert start date]
5. **SOW End Date:** [insert end date]
6. **Scope of Services, Deliverables and Acceptance Criteria** - The Services and Deliverables to be provided by the Supplier under this Statement of Work include the following:

[Insert description of services/ deliverables/licenses to be provided, and acceptance criteria (if applicable)]

7. **Names, Titles and Hourly Rates of Supplier's Personnel:**

Individual's Legal Name	Individual's Title	Hourly Rate
[insert name of personnel]	[Insert Title]	[Insert Rate]

8. **Invoices** - Invoices for payment of any charges under this Statement of Work shall be issued for each calendar month in which services are performed and sent to:

Liquor Control Board of Ontario
1 Yonge Street, 14th Floor
Toronto, Ontario M5E 1A4

Attention: [Insert name of LCBO billing contact]

or such other address as the LCBO may from time to time communicate to the Supplier in writing.

9. Notwithstanding anything to the contrary in this Statement of Work, or the Agreement, the parties acknowledge and agree as follows:

For clarity, in the event of a conflict between the terms set forth in Section 9 of this Statement of Work, and terms set forth in the Master Agreement, the terms of Section 9 of this Statement of Work shall govern with respect Supplier's provision of Services and/or Deliverables pursuant to this Statement of Work.

IN WITNESS WHEREOF the parties hereto have executed this Statement of Work as of the date first above written.

LIQUOR CONTROL BOARD OF ONTARIO

Per: _____

Name: _____

Title: _____

SHOPIFY INC.

Per: _____

Name: _____

Title: _____

I have authority to bind the Supplier.

SCHEDULE B

INFORMATION SECURITY REQUIREMENTS

a) Physical Security and data residency

Supplier's Online Services and POS Services and all related data processing occur in virtual hosting environments with industry-standard security certifications. Supplier is a cloud-based software service. The Online Services and POS Services, including the e-commerce StoreFront, Checkout, and all associated APIs & databases will be hosted in Canadian hosting environments.

b) Facilities

All of Supplier's data processing and storage occurs in facilities operated by trusted third parties. Supplier's servers are hosted at data centres with the following certifications:

- ISO 27001
- PCI DSS

Supplier's facilities are SOC 2 Type 2 compliant and undergo regular onsite audits to validate physical security and availability controls.

c) Technical Security

Supplier's systems are developed with security and privacy as guiding principles. Supplier's systems undergo thorough testing throughout their life cycles. Supplier's application security team implements automated controls appropriate for all types of systems used in the provision of Supplier's Online Services and POS Services, including dependency vulnerability patching, data isolation testing, static analysis, code signing, and kernel hardening.

d) Architecture

Supplier's Online Services is based on a multi-tenant architecture, optimized for performance and resiliency. Merchant data is segregated by Supplier by application-level controls.

The application environment on each of Supplier's servers (the application, its dependencies, and its configuration files) is replaced when changes are deployed, which eliminates vectors for malware persistence.

e) Application

Maintaining application security is critical to the development process. Supplier's developers are trained regularly on application security best practices, including OWASP Top Ten.

An automated service running on Supplier's code base monitors application dependencies for vulnerabilities. If a security issue is discovered in a library of Supplier's, Supplier responds quickly to mitigate any risk.

f) Input Validation

Customer input, such as form fields, is validated against a whitelist and decoded safely. Input validation and decoding protect against common attack vectors, including:

- HTML injection
- SQL injection
- XSS

g) Product Security Features

Additional security features can be set up:

- Enable multi-factor authentication for LCBO staff
- Configure SAML authentication for LCBO staff
- Define what personally identifiable information is collected from customers
- View activity logs, including recent login activity by user
- Set role-based access levels
- Enforce granular API scope permissions

h) Encryption

Information in transit is encrypted by Supplier using industry-standard cryptographic protocols. Supplier uses HTTPS protocol for checkout, storefronts and admin pages.

Credit card information and other sensitive information in operational data stores is encrypted at rest. When stored, all user passwords are salted and hashed by Supplier using the bcrypt hashing algorithm. Current best practices are implemented by Supplier as the cryptographic landscape evolves.

i) Vulnerability Scanning and Penetration Testing

Third-party vulnerability scans and penetration tests are performed regularly in order to identify and remedy potential security weaknesses.

j) Payment Card Processing

Supplier undergoes an annual PCI DSS onsite assessment by a qualified security assessor. All credit card data processed by Supplier is performed in a purpose-built environment, isolated from the Supplier's platform, Supplier's corporate networks, or any other systems maintained by Supplier. Supplier is audited to ensure this isolation is robust, and that Supplier has the appropriate controls in place for network security, data protection, vulnerability management, access control, monitoring, and policy compliance

k) Operational Security

Supplier's server and application performance is monitored continuously by a production engineering team. Performance metrics are established for numerous aspects of the SaaS online service, such as response time, network throughput, application exceptions, and other service oriented metrics for critical components. Production engineering, security operations and many other teams within Supplier's Engineering organization operate a 24/7 paging service to ensure prompt attention to any detected abnormalities in system operations.

l) Configuration Management

Supplier's configuration management tools ensure servers have the current configuration applied. Hourly applicable security patches are installed on all servers. Production users are authenticated by public key authentication. Access is granted by configuration management and role-based access controls at the Supplier's network perimeter.

m) Security Incident Response

Supplier's security incident response plan is reviewed and tested regularly. Supplier's employees undergo security awareness training that covers appropriate communication and escalation processes.

n) Logging

Supplier logs the following events:

- Web requests processed by Supplier
- Server activity
- Application activity
- Log access activity
- Authentication attempts

Logs are kept on log servers for approximately one month. They are then moved to offsite backup locations, where they remain available for at least 12 months.

p) Availability and Continuity

Supplier has multiple levels of redundancy to ensure data is available and that stores remain stable and secure. Supplier maintains disaster recovery processes for critical services which are regularly tested to ensure resiliency of our platform.

q) Uptime

Supplier maintains a publicly-accessible status page that includes current availability and recent incidents. Supplier's internal availability target, including scheduled maintenance, is 99.98%, which we have exceeded over the past 12 months.

r) Data Backups

Supplier's data backups are:

- Performed multiple times a day
- Encrypted with PGP
- Stored offsite
- Retained as needed for business purposes
- Automatically rotated on a schedule

FORM OF WRITTEN STATUS REPORT6817917 v7

SCHEDULE D BUSINESS CONTINUITY

1. Business Continuity Planning

Supplier represents and warrants that it has business resumption and contingency plans (a "Business Continuity Plan"), designed for ensuring continued provision of the Services required to perform POS sales and online sales (the "Critical Services") in the event of a problem affecting Supplier's operations, including its data systems and key personnel. Without limiting the generality of the foregoing and for greater certainty, the Business Continuity Plan will include business continuity, disaster recovery and testing requirements for all Services to be provided by Subcontractors. Supplier will, as part of any agreement with its Subcontractors, include business continuity related obligations, including testing requirements necessary to ensure that such Subcontractors comply with the obligations hereunder.

The plan must provide for resumption of Critical Services to LCBO (recovery time objective) within **S17** after the initial interruption of Critical Services, with a recovery point objective of **S17**. Supplier must test its plan annually and ensure its Subcontractors involved in the provision of Critical Services do so as well. Supplier will update the plan(s) on a semi-annual basis. Testing must not interrupt supplier's delivery of Critical Services to the LCBO. In the event Supplier suffers a significant or catastrophic event that affects performance under this Agreement the Supplier must implement the business continuity and/or disaster recovery plan(s), or perform other recovery actions as appropriate, in relation to Critical Services to LCBO within a reasonable time period. In the event a Subcontractor involved in the provision of Critical Services suffers a significant or catastrophic event that affects performance of Critical Services under this Agreement, Supplier will manage the triage and resolution process as well as escalation and communication. Supplier must attempt to implement the plan(s), where applicable, prior to declaring the occurrence of a force majeure event in accordance with Article 1.7 hereunder.

Supplier's Business Continuity Plan will be in writing and include the following minimum requirements:

- a. A description of the critical facilities including alternate sites, persons, Supplier personnel, roles, responsibilities, procedures and processes required to 1) provide a coordinated approach in managing a business interruption response activities at the time of any business interruption, and 2) recover operations and Critical Services at the time of any business interruption.
- b. A plan consisting of communication and escalation processes applicable in the event of a catastrophic business interruption including Supplier's 1) internal communications and escalation procedure(s), and 2) external communication and escalation procedures.
- c. Processes to 1) protect LCBO Data and the replacement of POS hardware, 2) protect Supplier's ability to perform the Critical Services, 3) facilitate the failover of all Critical Services to an Alternative Site (as hereinafter defined) and subsequent migration back to the Primary Site (as hereinafter defined) in accordance with the Service Level Requirements set out in the steady state SaaS Statement of Work, and 4) otherwise ensure continuity of the Critical Services, in the event of a business interruption.
- d. Without limiting the generality of the foregoing and for greater certainty, the Business Continuity Plan will include business continuity, disaster recovery and testing requirements for all Critical Services and any Critical Services provided by the Supplier's Subcontractors. Supplier will ensure that the Supplier's Subcontractors

providing Critical Services comply with the obligations.

2. Alternative Site Requirements

- a. Supplier will have and maintain for each primary site used to perform the Critical Services (each, a **"Primary Site"**) at least one alternative site (each, an **"Alternative Site"**) that is separate and apart from each Primary Site, and meets the following minimum requirements:
 - i. Each Alternative Site must be of a size and have functional capability and capacity sufficient to assume the production responsibilities and capacities of the applicable Primary Site, in accordance with the Agreement;
 - ii. Each Alternative Site must be located in Canada. Each Alternative Site must be supplied by a communication services provider from different sources than those supplying the applicable Primary Site, so as to minimize the likelihood that both sites would be affected by the same business interruption. Each Alternative Site must be supplied by a redundant power supply provided by battery back-ups and generators.
 - iii. Each Alternative Site must have security features that are no less stringent than those of the applicable Primary site, and must be equipped with all other necessary infrastructure required to support the Critical Services;
 - iv. Each Alternative Site must be capable of continuing its disaster recovery operations for an appropriate time period.

3. Data Backup, Storage and Recovery Requirements

- a. Supplier will
 - a. Document the technological recovery procedures for all hardware, systems and related services in each Primary Site, Alternative Site and in any additional recovery sites that support the provisions of Critical Services;
 - b. Ensure that each Primary Site, Alternative Site and any additional recovery site are maintained and integrated into Supplier's change management processes such that all Primary Sites, Alternative Sites and additional recovery sites are aligned;.
- b. Supplier will execute all data backup and recovery procedures necessary to ensure any LCBO Data that is resident on Supplier's systems are backed up at least daily, so as to permit Supplier to fully restore the Services to full functionality after a business interruption.
- c. Any LCBO Data resident on the Supplier's servers will have a recovery point objective and a recovery time objective as set out in this Appendix.
- d. In the event of an audit or a request from an applicable regulator, Supplier will make available information to LCBO related to the incident and recovery process arising out of a significant business interruption or crisis.

4. Supplier Emergency Contact Information

Supplier will designate a primary and secondary contact for cases of emergency disaster (The "Primary Supplier Emergency Contact" and the "Secondary Supplier Emergency Contact" and collective the "Supplier Emergency Contacts") responsible for the maintenance and implementation of the business continuity plan and equipped with the appropriate training and experience to assist the LCBO in the event of a business interruption. Supplier will provide the LCBO with the business telephone numbers and email addresses (including out of office contact information) for the Supplier Emergency Contacts to ensure contact can be established by various means with each individual on a **S17** a week basis (collectively, "Supplier Emergency Contact Information"). Supplier will: (a) keep the Supplier Emergency Contact Information up to date; (b) provide the LCBO with immediate notice of any changes to the Supplier Emergency Contact Information; and (c) incorporate such Supplier Emergency Contact information into the Business Continuity Plan.

Supplier Emergency Contact Information

Severity Level	Vendor Contact		Escalation Time
Severity 1: High Severity Problem with High, Major Impact to Business	Shopify Support	Name: Shopify Support Office No: 1-888-746-7439 Email Address: support@shopify.com	S17
	S14(1)(l)(i) Project Manager	Name: S14(1)(l)(i) Mobile S14(1)(l)(i) 3 Email Address: S14(1)(l)(i) i@shopify.com	S17
Severity 2: High Severity Problem with Impact to Business	Name Job Title	Name: Shopify Support Office No: 1-888-746-7439 Email Address: support@shopify.com	S17 ;
	Name Job Title	Name: S14(1)(l)(i) Mobile No: S1 3 Email Address: S14(1)(l)(i) i@shopify.com	S17
Severity 3: Medium Severity Problem with Impact to Business	Name Job Title	Name: Shopify Support Office No: 1-888-746-7439 Email Address: support@shopify.com	S17
	Name Job Title	Name: S14(1)(l)(i) Mobile No: + S 3 Email Address: S14(1)(l)(i) i@shopify.com	S17
Severity 4: Low Severity Problem	Name Job Title	Name: Shopify Support Office No: 1-888-746-7439 Email Address: support@shopify.com	S17
	Name Job Title	Name: S14(1)(l)(i) i Mobile No: S1 3 Email Address: S14(1)(l)(i) @shopify.com	S17

5. Assistance with the LCBO plans

On an ongoing basis, at LCBO's reasonable request, Supplier will consult and cooperate with LCBO and assist the LCBO in its development and refinement of its business interruption, disaster recovery and business continuity plans.

6. Business Continuity Attestations:

Annually, within the period set out in, and in accordance with Attestations, Supplier's President will deliver by email to the LCBO at bcmresponse@lcbo.com a letter setting forth the attestations regarding status of compliance with the Supplier's obligations under this contract.

Letter of Attestation for Business Continuity Example

To Ontario Cannabis Retail Corporation

Reference: MASTER SERVICES AGREEMENT made effective as of ●, 2017 (the "Effective Date") BETWEEN: LIQUOR CONTROL BOARD OF ONTARIO(the "LCBO")- and -Shopify Inc. (the "Supplier")

email: bcmresponse@lcbo.com

Date:

Shopify hereby attests that our Annual BCP and Disaster Recovery testing has been performed on date DD/MM/YYYY, as per the requirements set out in Master Service Agreement and Statement of Works

Shopify declares that the above statement is true and accurate to the best of my knowledge.

The following major issues were discovered and will be address as follows (if applicable):

Signature

(Director-level or above Shopify representative)